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# Under Pressure: Explaining Backlash Against Civil Society in the Andean Community

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**Under Pressure:**  
**Explaining Backlash Against Civil Society in the Andean Community**

by  
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POMONA COLLEGE

Claremont, California

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## **Abstract**

In this thesis, I consider the trend of increasing backlash against civil society around the world. I focus on Ecuador and Peru, both democratic countries that have placed restrictions on NGOs receiving foreign funding. I examine both countries in terms of changes over time in the regulatory environment for NGOs. I ask: What factors motivated these changes? I analyze the countries with respect to three possible explanations: defending sovereignty against foreign powers, stifling internal dissent, and seeking rents. In answering this question, I draw upon the laws in question, press releases, and news reports as well as interviews with NGO personnel and government regulators, among other sources. I conclude that while there is evidence for the stifling dissent explanation in both countries, there is no evidence for the defending sovereignty explanation in Peru and only circumstantial evidence for it in Ecuador. In Ecuador, there is contradictory evidence for the rent-seeking explanation while there is clearer evidence for it in Peru.

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## **List of Acronyms**

AE- Acción Ecológica ('Ecological Action')

AIDSEP- Interethnic Association for the Development of the Peruvian Jungle

ANC- National Association of Research Centers of Social and Development Promotion

APCI- Peruvian Agency of International Cooperation

COECCI- Foreign Entities of International Cooperation

CEOSC- Ecuadorean Confederation of Civil Society Organizations

CONAIE- Confederation of Indigenous Nationalities of Ecuador

CPI- Corruption Perception Index

CSO- Civil Society Organization

ECOSOC- United Nations Economic and Social Council

ENIEX- Foreign Entities of International Cooperation

FUNDAMEDIOS- Andean Foundation for the Observation and Study of the Media

ICNL- International Center for Not-for-Profit Law

IO- International Organization

NED- National Endowment for Democracy

NGO- Non-Governmental Organization

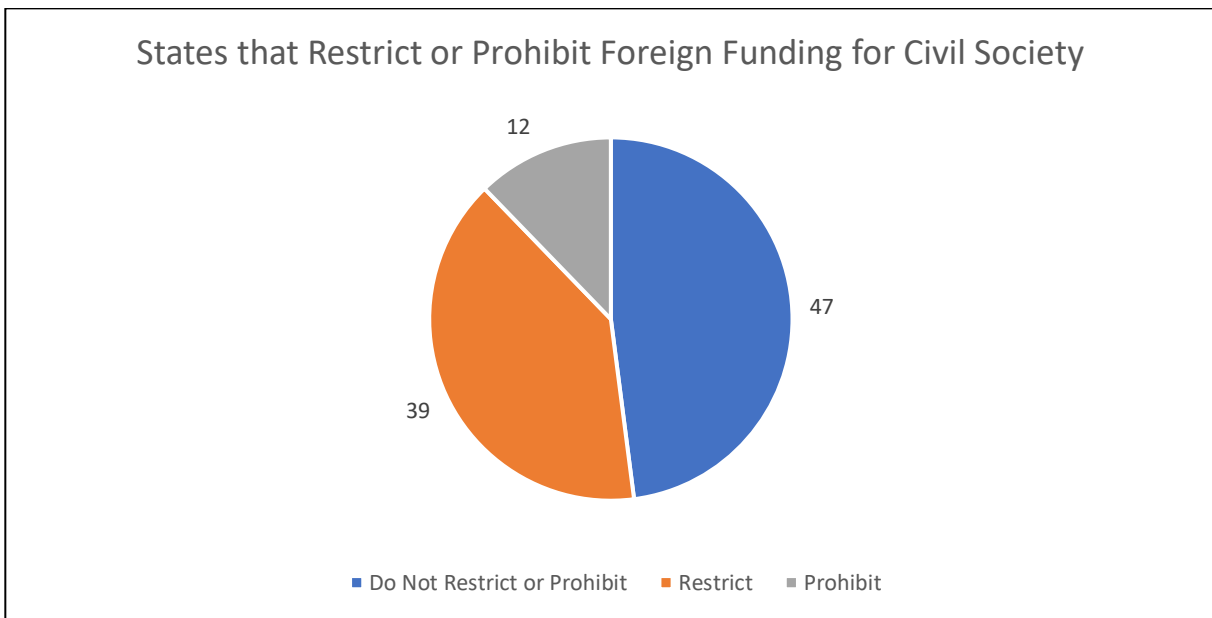
USAID- United States Agency for International Development

## Chapter I: Conceptualizing Backlash

Upon expelling the Danish NGO IBIS from Bolivia in 2013, President Evo Morales declared, “It will not be permitted that NGOs search for external financing and come to conspire against democracy and the government” (Azcui). The expulsion came after the signing of the Legal Personality Law, which allowed the state to close NGOs that it deemed to be out of compliance with their stated objectives (Vivanco, “Opinion | The Hypocrisy of Evo Morales”). Around the same time, Vice President Álvaro García Linera took to referring to NGOs as “Organizations of Other Governments on Bolivian Territory” (Appe and Barragán). In 2015, in an open letter to Bolivian civil society leaders, Linera justified his public criticism of four prominent NGOs on the basis of defending Bolivia’s sovereignty. He stated, “It is about a principle of sovereignty and elemental dignity for any democratic state and... as a public servant, I am not only in the right but in the moral and intellectual obligation to oppose any kind of interference in internal political activities” (Linera). In the same letter, he accused the NGOs in question of “playing the role of substitutes for right-wing political parties.”

Bolivia is not a special case in terms of placing restrictions on foreign-based NGOs or domestic NGOs receiving foreign funding. In a 2013 review of 98 countries, using analyses from sources such as the International Center for Not-for-Profit Law (ICNL), Darin Christensen and Jeremy Weinstein find that 39 countries restrict, and 12 countries totally prohibit foreign funding for NGOs. By restrict, they mean that the state “places at least one restriction on the receipt of foreign funds” and by prohibit, they mean that the state “places a strict upper limit on the receipt of foreign funds for at least a subset of NGOs” (Christensen and Weinstein). Significantly, the

majority of these measures are recent. They note, “It is clear that countries are tightening their regulation of civil society. More than half in our dataset have changed their legal rules to put some form of foreign-funding restriction in place” (Christensen and Weinstein). So, it is a growing trend.



*Figure 1: States that Restrict/Prohibit Foreign Funding, as of 2013 (Christensen and Weinstein)*

In a 2014 report from the Carnegie Endowment for International Peace, “Closing Space: Democracy and Human Rights Support Under Fire,” Thomas Carothers and Saskia Brechenmacher corroborate Christensen and Weinstein’s findings, placing Morales’s actions in a wider trend of backlash against civil society, particularly against NGOs engaged in democracy promotion and human rights protection:

After decades of growing global reach, the field of international support for democracy and human rights faces a worrisome trend: widening and increasingly assertive pushback around the developing and postcommunist worlds. Governments are erecting legal and logistical barriers to externally sponsored democracy and rights programs they deem too politically intrusive, publicly vilifying international aid groups engaged in democracy and rights work as well as their local partners, and harassing or expelling such international groups altogether. (Carothers and Brechenmacher)

While acknowledging that authoritarian and semi-authoritarian states have long repressed their domestic civil societies, the report contends that the current trend is different and especially concerning. In traditionally authoritarian states like Saudi Arabia and North Korea, leaders “have little room to further curtail [foreign] assistance” for domestic civil society. In semi-authoritarian states like Russia and China, leaders “usually concede limited space for independent civil society and opposition parties, but reduce that space whenever they perceive any significant challenge to their political grip” (Carothers and Brechenmacher). With the current trend, however, a large number of “relatively democratic governments that for decades encouraged or at least tolerated international democracy and rights support have also recently taken or seriously considered measures to restrict such assistance” (Carothers and Brechenmacher). In this sense, “pushback today often represents the loss of access that had already been achieved, rather than the ongoing struggle over access that has traditionally been denied” (Carothers and Brechenmacher). For advocates of democratization, this backslide is a most concerning development.

<b>Authoritarian</b>	<b>Semi-Authoritarian</b>	<b>Democratic</b>
Belarus	Azerbaijan	Bangladesh
Eritrea	Cambodia	Bolivia
United Arab Emirates	Ethiopia	Ecuador
Uzbekistan	Russia	Honduras
Zimbabwe	Venezuela	India
		Indonesia
		Kenya
		Nicaragua
		Peru

*Table 1: Countries exhibiting backlash, as of 2014 (Carothers and Brechenmacher)*

This trend transcends continental boundaries (see Table 1). In Europe, Hungarian Prime Minister Viktor Orbán has recently accused George Soros, the Hungarian-American billionaire and founder of the Open Society Foundations, of trying to “sweep away governments which represent national interests, including ours” (Nelson). Orbán has targeted Soros-funded NGOs that assist Middle Eastern and North African migrants with proposed legislation to close NGOs flagged as dangerous to national security. In justifying the measure, a government spokesman said, “These organizations definitely don't have a democratic mandate because they have never been voted for, nobody elected them, and definitely the only force is the money behind them” (Nelson). That NGOs are not democratic is not an original critique of civil society.

In Asia, India passed the Foreign Contribution Act in 2010. The act bans external funding “for any activities detrimental to the national interest and for matters connected therewith or incidental thereto” as well as for “organizations of a political nature,” as defined by the government (Carothers and Brechenmacher). As of 2016, 25 NGOs had been denied permission to receive foreign funding and another 11,000 or so had not renewed their permissions, many out of protest. Under Prime Minister Narendra Modi, the government has accused NGOs of staging a “growth-retarding campaign” against the country’s development (Doshi). That NGOs are standing in the path of development objectives is another common critique of civil society.

In Sub-Saharan Africa, Kenya, under President Uhuru Kenyatta, has tightened restrictions on foreign aid workers, threatened to deregister nearly 1000 NGOs for accounting discrepancies, and sought to restrict foreign funding to 15% of NGOs’ total funding (Brass). Collectively, these actions belie an anti-foreign streak on the part of the current administration. Seemingly, they also amount to retribution for Kenyatta’s referral, by domestic NGOs, to the International Criminal Court for his role in inciting ethnic violence during the 2007 presidential

election (Kuo and Kuo). Though the court opted not to prosecute Kenyatta, the episode seems to have left him wary of the strength of independent civil society.

### Contextualizing Backlash

While the trend is relatively clear—mounting backlash against civil society, particularly against foreign funded NGOs—its cause is more ambiguous. According to Carothers and Brechenmacher, “the explanation lies in several interrelated and major changes in international politics.” The report traces attitudes towards NGOs engaged in democracy promotion over time, from the era of the Cold War through to the present. During the Cold War, developing countries consented to foreign assistance on the conditions that it was apolitical and state-centered: “that the assistance would aim at producing socioeconomic progress rather than political change, and that aid providers would channel aid to governments” (Carothers and Brechenmacher).

After the fall of the USSR, however, Western donors “began to substantially increase the share of assistance going directly to nongovernmental organizations rather than governments in aid-receiving countries, whether under the rubrics of civil society development or participatory development” (Carothers and Brechenmacher). In the resultant unipolar world, recipient states consented to this modification of the arrangement in keeping with the general spirit of democratization. At this point, there was relatively little reason to fear the erosion of sovereignty, as support for NGOs “seemed to consist of rather unfocused efforts to distribute paltry amounts of aid to a plethora of minor actors for the vague purpose of fostering civil society development” (Carothers and Brechenmacher). Such support did not seem especially threatening to ruling regimes.

When the democratic wave eventually stalled in the early 2000s, many hybrid regimes adopted an instrumental attitude towards foreign assistance. That is, “eager to preserve a

semblance of democratic pluralism as well as their international political reputation, they let such assistance proceed when it did not seem to present a serious threat to their hold on power, but curtailed or undermined it when they perceived it to be politically destabilizing” (Carothers and Brechenmacher). However, the deposition of Yugoslavian leader Slobadan Milosevic in 2000, facilitated in part by Western-backed NGOs, marked a turning point for foreign assistance for civil society: “it set off alarm bells... among strongman governments throughout the developing world fearful of both domestic upheaval and external intervention” (Carothers and Brechenmacher). Though not the primary reason behind Milosevic’s fall, some Western-backed NGOs had advocated strongly for this outcome.

The 2003 US invasion of Iraq—on the false pretense of confiscating Saddam Hussein’s ‘weapons of mass destruction’—further tarnished the notion of democracy promotion. In short, for many ‘hybrid’ leaders, “Democracy promotion had become synonymous for ‘Western-imposed regime change’” (Carothers and Brechenmacher). Then in 2005, the Paris Declaration on Aid Effectiveness provided countries with a ready justification for restricting civil society. That is, “interpreting country ownership as government ownership, some aid-receiving governments wielded it as a legitimizing tool for their efforts to push back against aid they found politically threatening and intrusive” (Carothers and Brechenmacher). In this respect, the consequence of the declaration had the unintended side-effect of seemingly legitimizing efforts to disempower civil society.

### Research Question

In general, analyses of the backlash trend tend to be sweeping and, consequently, somewhat cursory with respect to the attention paid to the particular dynamics at play in each state. The aforementioned report definitely falls into this camp. In opposition to those who

“focus on the psychology of certain outspoken leaders,” its authors reply, “it is crucial not to lose sight of the larger causal forest for the sake of some striking individual trees. In seeking to understand why pushback has become such a widespread phenomenon only relatively recently... it is necessary to take a broader view” (Carothers and Brechenmacher). Certainly, this approach has merit. After all, trends only come into focus at some distance. But this is necessarily a reductive lens, obscuring differences between countries with respect to the causes and manifestation of backlash.

While the report situates the trend in historical context, identifying the geopolitical developments that primed it, it does not explain the trend with respect to the internal social, political, and economic dynamics of the countries in question. So, focusing on the intra-national level, I ask: Why do states restrict civil society? More precisely, to what end to states place restrictions on foreign-funded NGOs? In this thesis, I focus on South America, specifically the Andean states of Ecuador and Peru. Both of these states fall into the aforementioned report’s third category of relatively democratic states that have recently taken measures to restrict civil society.

This question is not just of theoretical but also practical significance. For mission-driven, foreign-funded NGOs, its answer is potentially relevant to adopting strategies to overcome regulatory barriers (e.g. partnering with academic institutions). For foreign donors, its answer is potentially relevant to framing their aid in negotiations with the host country about the terms of assistance (e.g. appealing to national development objectives). And for institutions of regional and global governance and other states committed to democratic principles, its answer is potentially relevant to crafting policy towards the state in question (e.g. supporting, tolerating, critiquing, sanctioning, etc.).



### Possible Explanations

In this thesis, I examine both cases with respect to three possible explanations: defending sovereignty against foreign powers (E1), stifling domestic dissent (E2), and rent-seeking (E3). Of course, this is not an exhaustive list; there may be other credible explanations. While it is unlikely that all of these explanations apply to a given case, they are not necessarily mutually-exclusive. That is to say, I am open to the possibility that backlash is motivated by a combination of factors.

#### *Defending Sovereignty (E1)*

One possible explanation is that states restrict foreign-funded NGOs to curtail subversive foreign influence. On this view, these restrictions constitute a reassertion of sovereignty against Western donor states and in particular against the US. This explanation is consistent with the stated rationale of leaders like Morales, who often alleges that the US is working to destabilize his regime via its funding of civil society. His characterization of the US is that of a neo-imperialist power, intent on retaining its historical hegemony over the hemisphere, especially in light of China's growing influence in the region.

Historically, this characterization is well founded. For most of the 20<sup>th</sup> century, US foreign policy towards Latin America was characterized by direct military interventions (e.g. Cuba, Dominican Republic, Grenada, Guatemala, Haiti, Mexico, Nicaragua, Panama) as well as indirect interventions (e.g. Bolivia, Brazil, Chile, Cuba, Dominican Republic, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama), not to mention other forms of economic intervention (Coatsworth).

Barring outright cooptation of the NGO by a foreign power (i.e. NGO as 'trojan horse'), implicit in this allegation is an assumption of donor dependency: reliant for their organizational

survival on continual grants, NGOs are incentivized to align with their donors' preferences to improve their odds of winning new grants or, conversely, to decrease their odds of losing existing ones (Akbar). NGOs are thus vulnerable to 'puppetisation' by their donors: "since patrons have both the inclination to hold NGOs accountable and the means to 'punish' them, the most important danger lies not in the NGO's abusing the trust but in the patron's abusing its powers of punishment" (Najam). In this sense, NGOs may not actually be as independent as they claim to be.

While this would seem to substantiate the allegations of leaders like Morales, there is also cause for skepticism. For instance, Alison Brysk argues that "this objection [to foreign assistance] is valid only if states themselves eschew foreign assistance, and only insofar as foreign support threatens the state's monopoly of coercion" (Brysk). It is hypocritical, she suggests, for a state that readily accepts foreign aid to cast aspersions on domestic NGOs for doing the same. Further, she claims, even if the state does not accept foreign aid, it is not the case that foreign funding necessarily undermines state sovereignty. That is to say, the burden of proof falls on the state to demonstrate precisely how such assistance is working to undermine it. To the contrary, she contends that in many countries, foreign support is necessary to "level the playing field" between the state and its society (Brysk).

### *Stifling Dissent (E2)*

Along these lines, another possible explanation is that states restrict foreign-funded NGOs to stifle domestic dissent. Carothers implies this when he asks the question:

Are [these governments] genuinely afraid that relatively modest Western democracy-training programs and financial aid for often weak civic and political groups will undermine their hold on power, or is this fear just a convenient justification for repressive measures they would take anyway? (Christensen and Weinstein).

In this light, the anti-imperialist rationale looks like a spurious excuse for curtailing oppositional domestic actors, such as environmentalists protesting the extraction of natural resources.

There remains, however, a deeper question about the end to which states stifle dissent. As the sub-end, some see facilitating of economic development. In part, this entails attracting foreign investment. In Latin America, as in Africa, this increasingly means Chinese investment. In fact, China has made considerable economic and political inroads in Latin America in the past decade, propping up Maduro's regime through the purchase of Venezuelan oil and investing heavily in infrastructure all the way from Central America to the Southern Cone. Chinese investment is largely concentrated in extractive projects which are often the object of protest by NGOs. Thus, curtailing NGOs' ability to protest minimizes the risk associated with such investments, incentivizing further investment. More critically, others simply cite the accumulation of power as the sub-end. They focus on the psychology of individual leaders like Morales, who is currently trying to amend the constitution so that he can stand for an unprecedented fourth term (Margolis).

### *Seeking Rents (E3)*

A third possible explanation is that states restrict foreign-funded NGOs to facilitate rent-seeking. That is, by placing more obstacles in their path, they create more opportunities to solicit bribes from NGOs seeking legal standing or permission to receive foreign funding. In this sense, the measures may be a way for leaders to reward the lower-level officials who staff the various ministries which oversee civil society, thus shoring up political support for their regime.

According to Brad Epperly and Taedong Lee, following Holmes, in generally corrupt states "systemic corruption should affect agencies such as the tax police, the procuracy, and regulatory agencies to a high degree, given the already-high levels of discretion involved in these

fields” (Epperly and Lee). More precisely, following Green, they state, “Corruption in the above institutions and others allows for greater administrative discretion in policies like registering new organizations, inspecting their premises, and monitoring their activities, and should create a situation where state agents are more likely and better able to extract rents from existing or new NGOs” (Epperly and Lee). To be clear, this explanation is not about corruption internal to NGOs—though this may be present too—but about NGOs operating within a corrupt *system*. In this system, corrupt regulatory officials exploit NGOs’ principled commitment to mission to extract rents from them.

### Definitions

#### *Non-Governmental Organization*

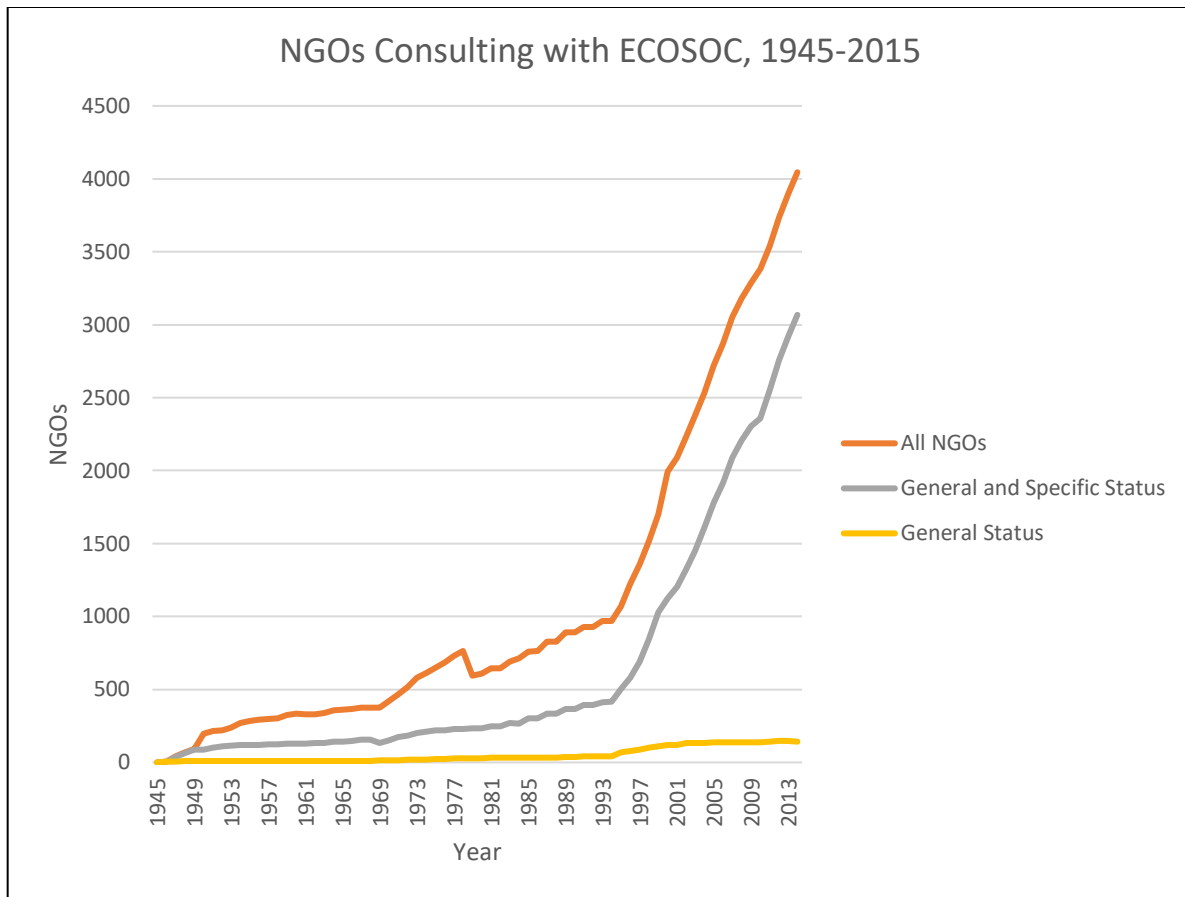
The term ‘non-governmental organization’ is a vague one. According to the UN, an NGO is “an independent voluntary association of people acting together on a continuous basis, for some common purpose, other than achieving government office, making money or illegal activities” (Willetts). This definition is an essentially negative one; it refers to a group that is non-governmental, non-profit seeking, and non-criminal. There are many types of NGOs, including religious charities, advocacy groups, think tanks, and professional associations (Spar and Dail).

Regarding the first condition, it is important to note that non-governmental does not mean nonpolitical. That is to say, “The attention, resources, and political space afforded to NGOs have political consequences as NGOs may upset the political status quo, create political uncertainty, and generate new sets of political winners and losers” (Bloodgood et al.). In this sense, NGOs—even on principle apolitical ones—have political implications. Regarding the second condition, the stipulation that NGOs derive the majority of their funding from private sources is often

unsatisfied in practice. In fact, some contractor NGOs—“engaged primarily in design, facilitation and implementation of developmental sub projects”—derive *all* of their funding from public sources (Kamat). But this an extreme case and most NGOs receive their funding from a combination of private and public sources.

In a more positive sense, “NGOs are formal (professionalized) independent societal organizations whose primary aim is to promote common goals at the national or the international level” (Martens). They are *formal* in that they have an organizational structure with a headquarters, a skilled staff, a constitution, and legal standing in a state. They are *independent* in that they are primarily supported by member fees and private donations, though many receive funding from public sources. They are *societal* in that their members come from the private sphere and they promote common goals in advocating for the provision of public goods (Martens).

NGOs have proliferated since the end of the Cold War, when funding that had been earmarked for military operations suddenly became available for democratization programs, particularly in the former Soviet bloc (Florini). In terms of the number of NGOs with ‘consultative status’ in United Nations Economic and Social Council (ECOSOC), the growth of NGOs was rather slow from 1945 to 1994; in these fifty years, only about 1000 NGOs gained consultative status (see Figure 2). In the fifteen years between 1994 and 2009, however, over 3000 additional NGOs gained this status.



*Figure 2: NGOs Consulting with ECOSOC (Willetts)*

The Andean Community is no exception to this trend. As of 2018, there were over 3,800 NGOs active in its four member-states (see Figure 3). However, only 10% of these NGOs are actually based in the Andean Community. The other 90% of NGOs operating in the Andean Community are based in other countries, primarily in North America and Europe. This gaping disparity has not gone unnoticed by regional leaders, who point to it as evidence of excessive foreign influence in their countries.

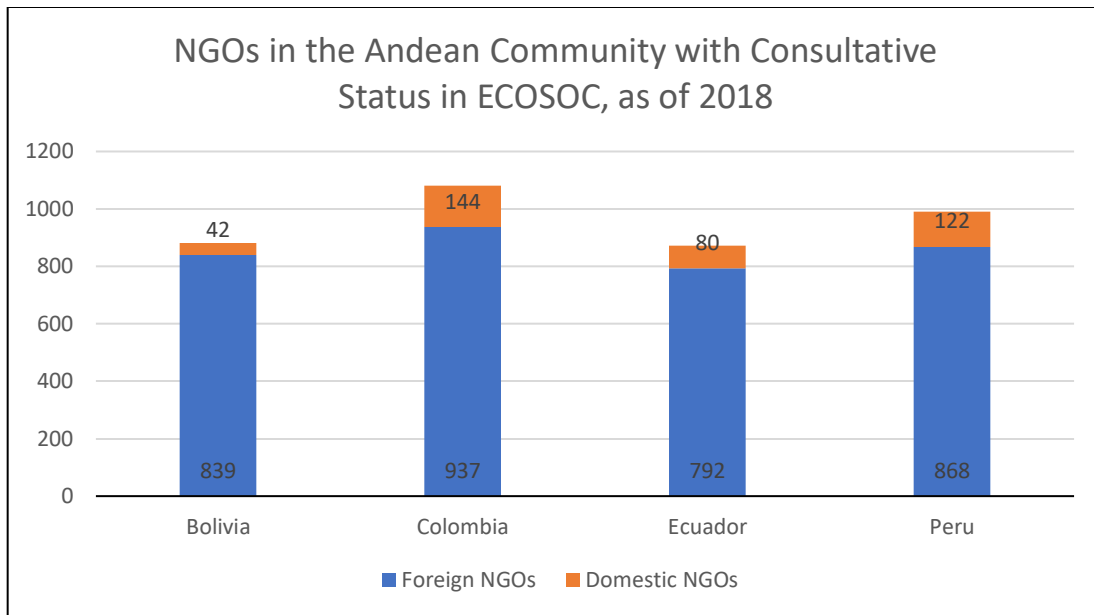


Figure 3: NGOs in Andean Community Consulting with ECOSOC, as of 2018 (“CSO Net”)

This explosion in the number of NGOs has come in the context of the ideological ascendancy of neoliberalism. Before and during the Cold War, “development policy and programmes in the Third World followed a largely social democratic model that prescribed a central role to the state in building democratic societies” (Kamat). After the Cold War, however, “the state... [was] represented as fragmented by private interests... and hence inept at representing the will of the people” (Kamat). In this context, for foreign donors NGOs presented an attractive alternative to the state in the distribution of aid.

### *Civil Society*

NGOs constitute only one element of civil society, “the third sector of society, along with government and business” (*Civil Society*). Indeed, civil society is quite a broad term:

Properly understood, civil society is a broader concept, encompassing all the organizations and associations that exist outside of the state (including political parties) and the market. It includes the gamut of organizations that political scientists traditionally label interest groups—not just advocacy NGOs but also labor unions, professional associations (like those of doctors and lawyers), chambers of commerce, ethnic associations, and others. (Carothers)

Other manifestations of civil society include religious organizations, sports clubs, and student groups.

But civil society is more than just an umbrella term. According to Brysk, “Civil society is *public* and *political* association outside the state, not a residual category or a list of types of actors. Its political role is not just to aggregate, represent, and articulate interests, but also to create citizens, to shape consciousness, and to help define what is public and political” (Brysk). On this view, civil society is not merely a category of political actors but a collective actor with a key role to play in the process of democratization.

This is not to say, however, that a vibrant civil society necessarily begets a strong democracy. As Debora Spar and James Dail explain, “An active civil society may well be associated with an active or growing democracy, but the expansion of civic participation does not guarantee the emergence of political rights” (Spar and Dail). Civil society alone cannot create rights, which are by definition a contract between the state and society. There is also some evidence to suggest that civil society can work against democracy. While civil society can “discipline the state, ensure that citizens’ interests are taken seriously, and foster greater civic and political participation,” it can also “choke the workings of representative institutions and systematically distort policy outcomes in favor of the... better organized” (Carothers). In other words, bigger is not necessarily better when it comes to civil society.

Nor is civil society itself necessarily democratic. To qualify as such, Brysk says it “must be representative, accountable, and pluralistic, and it must respect human rights” (Brysk). The same criteria apply to individual NGOs. If not, they risk “undermining [civil society] itself” and with it, the greater process of democratization (Brysk). As Carothers observed in 1999, “The burgeoning NGO sectors in [democratizing] countries are often dominated by elite-run groups



that have only tenuous ties to the citizens on whose behalf they claim to act, and they depend on international funders for budgets they cannot nourish from domestic sources” (Carothers). In many countries, the same observation could apply equally well today.

### Methodology



*Figure 4: Map of the Andean Community*

In this thesis, I employ qualitative methods complemented by descriptive statistics. The core of my thesis are case studies of Ecuador and Peru with respect to the regulatory environment for NGOs. Ecuador and Peru are full members of the Andean Community, along with Bolivia and Colombia (see Figure 4). I have focused on the Andean Community not because it is the most repressive environment for civil society in the region. That would probably be Venezuela (a former member of the bloc), with the forcible repression of dissent under the Maduro administration (Avenue et al., “World Report 2017”). Rather, the Andean Community merits consideration because, unlike increasingly authoritarian Venezuela, its member-states are

host to nominally free political environments. In this context, the restrictions on NGOs suggest democratic backsliding.

While there is variation within the bloc between the most hostile state (arguably Bolivia) and the least hostile state (arguably Colombia) for civil society, all of the countries exhibit at least some features of backlash. As Bolivia has received considerably more attention in the press and in the academic literature, I have excluded it as a case study. I have also excluded Colombia, as it is not considered by the aforementioned report to have crossed the threshold for consideration as a backlash state. So, I take up Ecuador and Peru as case studies. In so doing, I aim to develop a deeper understanding of the motivations behind restricting civil society in the region. My aim is not to generalize my findings to Latin America as a whole.

In each case study, I trace the history of state-civil society relations through recent presidential administrations, presenting key changes in the regulatory landscape for NGOs in historical context. My sources include interviews with NGO personnel, government regulators, USAID officers, and an academic, conducted in country in December 2017. Altogether, I spent nearly three weeks in Ecuador and Peru conducting interviews and familiarizing myself with the historical and cultural contexts of both countries. In this thesis, I also draw upon the texts of the laws in question, statements from public officials, articles from national and international media, press releases from NGOs, and reports from domestic civil society umbrella organizations and international third-party monitoring organizations, among other sources. I then analyze each case with respect to the above explanations.

## Chapter II: Ecuador

### Timeline

January 2007	• Correa assumes office
March 2008	• Correa issues Decree 982, raising barriers to entry for NGOs
September 2008	• Montecristi Constitution is approved
March 2009	• Acción Ecológica has its legal status revoked
September 2010	• Police officers mount an unsuccessful coup against Correa
June 2013	• Correa issues Decree 16, replacing Decree 982
December 2013	• Fundación Pachamama is dissolved
June 2015	• Fundamedios is threatened with dissolution
August 2015	• Correa issues Executive Decree 739, modifying Decree 16
December 2016	• Acción Ecológica is again threatened with dissolution
May 2017	• Moreno assumes office
October 2017	• Moreno issues Decree 193, rescinding Decrees 16 and 739

*Table 2: Timeline of key events pertaining to civil society*

### Background

#### *Correa Administration, 2007-2017*

Rafael Correa was elected in 2006, part of the ‘Pink Tide’ of leftist leaders in South America in the 21<sup>st</sup> century—from Venezuela (1999, Hugo Chávez) to Argentina (2003, Néstor

Kirchner) to Bolivia (2005, Evo Morales). As with other leaders of the ‘Pink Tide,’ Correa ran on a platform critical of the neoliberal agenda promoted by the US in the region.

An economist by training, Correa obtained his PhD from the University of Illinois and taught as a professor at the University of San Francisco in Quito. Subsequently, Correa served as Director of the Ministry of Education and Culture under President Sixto Durán Bailén and then as Minister of Finance under President Alfredo Palacio. During his presidential campaign, however, representing the Proud and Sovereign Fatherland Alliance (‘Alianza PAIS’), Correa portrayed himself as a political outsider with a decidedly anti-establishment message.

Initially, Correa’s victory was met with optimism by many elements of Ecuadorean civil society. “When Correa came to power, there was a lot of hope,” said César Ricaurte, the director of the Andean Foundation for the Observation and Study of the Media (Fundamedios), a Quito-based NGO that advocates for freedom of the press (Ricaurte). In 1999, Ecuador experienced a severe financial crisis marked by the failure of more than a dozen banks and the subsequent adoption of the dollar as a means of stabilizing the economy and stopping hyperinflation. The crisis prompted thousands of Ecuadoreans to emigrate from the country and led to the resignation of President Jamil Mahaud (Cejá). In the decade prior to Correa’s election, no administration had lasted longer than three years.

Then, Ricaurte explained, “this movement and young leader appear that take all of the historical signals from civil society and social movements and convert them in their political platform.” It was an exciting moment for Ecuadorean civil society. He remarked, “Alianza PAIS and Rafael Correa come to power with an agenda for which Ecuadorean civil society had been fighting for 20 years, ever since the return of democracy.”

Montecristi Constitution

Once in office, Correa acted quickly on his campaign promise to replace Ecuador's constitution, convening a Constituent Assembly in 2007. Ratified in 2008 by popular vote, the Montecristi Constitution was notable for its progressivism. For example, it recognized Ecuador as an intercultural and pluri-national state. It also acknowledged the concepts of Pachamama (roughly, the Quechua concept of mother nature) and Sumak Kawsay ('Good Living'), "the participation of human beings in a vital joining of a cosmic character... in tightly held relationality, or harmony with nature" (Salazar). Moreover, it subjected all rights to the attainment of Sumak Kawsay.

In practice, however, the constitution proved problematic for civil society. The problem, critics said, was not that the constitution was too vague but that its propositions were too numerous and too explicit: "they drafted a Constitution so descriptive and detailed on the subject of rights, that what they accomplished was the limitation of rights, or even their elimination" (Salazar). For example, with respect to the freedom of expression, the constitution protected only information that is "true, verified, timely, contextualized, diverse, without prior censorship of the facts, events, and the processes of general interest" (Salazar). These stipulations left the door open for sanctioning outlets for failing to sufficiently contextualize the news as well as imposing official content on outlets in the form of corrections.

In coopting many of the key tenets of Ecuadorean civil society, the constitution effectively depleted much of the political oxygen for NGOs. As Ricaurte clarified, "The governors and ministers now say that the state is... going to guarantee all of the rights of the Ecuadoreans, so it is not necessary for [an independent] civil society to exist. There can only be a civil society dependent on the state." So, what initially seemed like an endorsement came to look to NGOs more and more like repression. Thereafter, Ricaurte said, "There was a crisis of identity

and there was a crisis of objectives and functions because in the new model... [the state] assumed much of the role that had been historically assigned to civil society.” Officially, there was little left for NGOs to do.

#### Decree 982

Long predating the constitution, Ecuador’s Civil Code gives the president the authority to regulate NGOs by issuing executive decrees (“Ecuador”). As president, Correa made ample use of this authority. In 2008, he signed Decree 982, erecting barriers to entry for NGOs seeking legal status. These included possessing at least \$400 or \$4000 in funding, depending on the type of organization, as well as disclosing the identities of the organization’s founding members (“Ecuador”).

One of the first applications of Decree 982 , in a punitive sense, was against Acción Ecológica (AE). Founded by a group of university students in Quito in 1986, AE adheres to a grassroots model of environmental defense. It primarily supports rural and indigenous communities in opposing extractive activity on their lands. As laid out in its legal statute, its ends include conducting ecological studies, publicizing environmental problems, conducting relations with national and international environmental actors, and advocating for legal protections for the environment. Its stated objectives include protecting rights, people, communities, and the environment, spreading awareness of environmental contamination, and educating rural and urban sectors about environmental preservation (“Quiénes Somos”).

Over its 30-year history, AE has found itself in conflict with the state on multiple occasions. “We have been a group that practically gets in the way of the plans and the policies of the government,” said Dr. Alexandra Almeida, the president of AE (Almeida). When Correa entered office, however, the nature of the conflict changed. “When Correa’s government comes

in, that is when the persecution begins,” she said. AE first found itself in conflict with Correa in 2009 after protesting the Mining Law, which permitted transnational companies to mine Ecuador’s rich mineral reserves with 25-year concessions (Derksen). AE challenged the constitutionality of the law, concerned about its potentially deleterious impact on indigenous communities. Subsequently, the Ministry of Health revoked AE’s legal status. It argued that AE should have been registered with the Ministry of the Environment, which was created in 1996. To change ministries, however, AE would have had to reconstitute itself as a new organization, with a new name and charter.

Objecting to the government’s dichotomous conception of environmental protection and human health, AE refused to re-register as a new organization. “We would not have problems with transferring to the [Ministry of the] Environment,” said Almeida, but only “as the same organization, with its twenty-something years of functioning.”

In its plight, AE attracted the attention of a broad coalition of foreign actors. For instance, in an open letter to Correa from author Naomi Klein, published by the North American Congress on Latin America (NACLA), she expresses “shock and confusion” at Ecuador’s decision to revoke AE’s legal standing:

What impressed me so much about Acción Ecológica was the fact that it is so clearly part of a genuine people’s movement, working in direct solidarity with the communities affected by the extractive industries.... What a shame it is that instead of seeing what I saw—a progressive government working with grassroots and indigenous movements to find solutions that reconcile economic justice with ecological imperatives and indigenous rights—these activists are instead seeing something all too familiar: a state seemingly using its power to weaken dissent. (Klein)

Ultimately, after a successful challenge in court, the government relented, allowing AE to transfer ministries as the same organization.

## 2010 Coup Attempt and Aftermath

In 2010, Correa was the victim of an attempted coup by disgruntled police officers. Incensed about a pending law to restrict bonuses and slow promotions, members of the National Police briefly detained Correa in a hospital before he was rescued by army forces (Carroll, “Ecuador Declares State of Emergency as Country Thrown into Chaos”). In hindsight, the attempted coup was a turning point in Correa’s attitude towards civil society. “From then on,” said Ricaurte, “there was a very open confrontation between Fundamedios and the government. The government attacked us very frontally, saying that we were CIA agents, that we were traitors to the country, etc.”

Over the years, Correa went on to repeat this allegation many times. On June 6, 2012, for example, on his weekly TV program, Citizen Link, Correa cast Ricaurte as a friend of the US after attending a reception in DC. “We already know that Fundamedios is part of the gang, César Ricaurte is a pal. Now we know because he has open doors in Washington,” he said. In addition, on April 28, 2012 he alleged that “César Ricaurte’s Fundamedios is a surveillance group of the [US] Embassy” because it receives funding from USAID and the National Endowment for Democracy (NED) (*Menciones de Fundamedios En Las Sabatinas*).

In light of Correa’s rhetoric, USAID’s departure from Ecuador in 2014, after 53 years of operating in the country, was not a surprising move. It had been unable to renew its contract with the government over a dispute regarding the roughly 10% of its budget allocated for “democracy and governance” programs, of which \$280,000 went to Fundamedios in 2011. As with Chavez and Morales, who expelled USAID from Bolivia in 2013, Correa had characterized such programs as politically subversive (“USAID Is Leaving Ecuador”).

USAID was not the only foreign donor to pull out of Ecuador. Germany’s Konrad Adenauer Foundation, a private foundation associated with the Christian Democratic Union



Levine

though predominately federally funded, also left in 2014 over “the growing control and influence of the government in Quito over the political work of foundations and NGOs” (“Fundación alemana Konrad Adenauer anuncia que dejará Ecuador por motivos políticos”). In this sense, Correa’s qualms were not just with the US but also with its western allies.

#### Decree 16

Supplanting Decree 982, Decree 16 of 2013 established a compulsory registry of NGOs—the Unified System of Information on Social Organizations (SUIOS). It also laid out the conditions for which an NGO could be dissolved. These included:

- Deviate from the ends and objectives for which it was constituted
- Dedicate itself to activities of political partisanship... of interference in public policies that endanger the internal or external security of the state or that affect public peace
- Repeatedly contravene regulations emanated from the competent authorities for awarding legal status or by the entities of control and regulation.<sup>1</sup>

The first casualty of Decree 16 was Fundación Pachamama, a Quito-based environmental NGO that partnered with indigenous communities to oppose oil development in the Amazon region. In 2013, members of the foundation took part in a protest against the XIth Oil Round, an auction of drilling blocks in the rainforest. In response, the government accused the organization of encouraging violence during the protest. Per the language of the decree, the Ministry of the Environment charged the foundation with “executing actions that were not consistent with their statutory ends and objectives” as well as “interfer[ing] with public policies against the internal security of the state and the public peace.” It dissolved the organization in December 2013.

#### Decree 739

Reforming Decree 16, Executive Decree 739 of 2015 modified the requirements for granting legal status to NGOs. Precisely, it eased reporting requirements, removed the financial

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<sup>1</sup> Executive Decree 16 of 2012, Section VI, Article 26

thresholds, and removed the requirement that organizations have legal representation throughout the registration process (Conaghan). It also removed prolonged inactivity as grounds for dissolution (“Decreto 193” 193). However, the changes failed to appease Ecuadorean civil society. Specifically, the Ecuadorean Confederation of Civil Society Organizations (CEOSC) lodged the following three complaints:

1. Executive Decree 16 has not been repealed, which leaves us with two decrees that regulate CSOs: Decree 16 and Decree 739, this generates confusion in the application of the law.
2. It is possible to dissolve a CSO that conducts activities that affect public peace or for not following a ruling given by any state institution.
3. Also, government has vaguely defined the concept of good CSO government, who evaluates it and based in which criteria. (“Analysis of Executive Decree 739”)

With respect to the third complaint, the vagueness of the concept of good governance was problematic insofar as failing to meet the standard of good governance was grounds for government intervention.

In June 2015, appealing to Decrees 16 and 739, the National Secretariat of Communication (SECOM) moved to dissolve Fundamedios on the charge of engaging in political activity. (For an incomplete list of organizations dissolved under Decrees 16 and 739, see Table 3.) It alleged that “Fundamedios has disseminated messages, alerts and essays with indisputable political overtones that make clear the position of this social organization whose scope should limit itself to the areas of social communication and journalism” (Mar). The motion was met with an international outpouring of support for Fundamedios. For example, in an open letter to Fernando Alvarado, the Secretary of Communication, the International Freedom of Expression Exchange (IFEX) commented:

Monitoring, documenting and disseminating information about the conditions of freedom of expression in society is essential to the functioning of civil society around the world and at the core of our members' work. It is inconceivable therefore that this activity could

reasonably be construed as being outside the legitimate mandate of a freedom of expression organization such as Fundamedios. (“Ecuador”)

Amnesty International also released a bulletin—“Urgent Action: Government Moves to Close Ecuadorian NGO”—urging readers to write to Correa and the Minister of Justice, “Reminding them that States have a responsibility to protect human rights defenders and create the conditions necessary to ensure that they can carry out their legitimate activities without any unfair restrictions or fear of reprisals” (*Government Moves to Close Ecuadorian NGO*).

<b>Ministry</b>	<b>Registered Organizations</b>	<b>Dissolved Organizations</b>	<b>Inactive Organizations</b>
Economic and Social Inclusion	23,580	121	
Education	2,034	48	
Environment	236	276	
Industry	1,575		
Labor			
Agriculture*	10,160		1,958
Total	37,585	445	
*Information provided by the Register of Multisector Organizations (ROM)			

*Table 3: Organizations dissolved by ministry, as of May 2017 (Fundamedios)*

Bowing to the pressure, in September SECOM dropped the motion. However, in a statement announcing the decision, it cautioned Fundamedios against “raising unfounded alerts for the sole purpose of affecting the prestige of Ecuador and its institutions” (“FUNDAMEDIOS”).

#### *Moreno Administration, 2017–Present*

Correa’s vice president from 2007-2013 and chosen successor, Lenín Moreno campaigned on a platform of carrying forth Correa’s ‘Citizen Revolution,’ albeit with a lighter hand than his predecessor. Polling closely with his conservative opponent Guillermo Lasso—whom he beat by only 2.3% in the runoff—Moreno distanced himself slightly from Correa,

offering “continuity with change” and “an outstretched hand” to elements of the traditional opposition (Stoessel).

Once in office, however, a sizeable rift developed between Moreno and Correa. In August 2017, he forced out his vice president, Jorge Glas, a holdover from the previous administration, on corruption charges in connection with the Brazilian construction firm Odebrecht (Shifter and Raderstorf). Then in November 2017, Alianza PAIS took the drastic step of expelling Moreno from the party, ostensibly over missing a few meetings (Stoessel). Most recently, in February 2018, Moreno succeeded in amending the constitution to reinstate presidential term limits, which Correa had abolished in 2015 (“Ecuador Votes to Limit Presidents’ Terms in Blow to Rafael Correa”). The amendment, approved by a nationwide referendum, effectively barred Correa, who already served two terms, from returning to office.

#### Repeal of Decrees 16 and 739

Moreno has also broken with Correa’s adversarial posture towards civil society, sending signals of reconciliation to Ecuadorean NGOs. In September 2017, for example, he received leaders of CONAIE in the presidential palace. He reassured them, “Never again do we want a paternalistic state that tries imposes on everyone a single way of life. Here the only rules are respect and tolerance” (*Por Segunda Ocasión Presidente Moreno Recibe a CONAIE En Carondelet Para Analizar Nuevas Propuestas*).

Then in October 2017, acknowledging pressure from NGO leaders, he repealed Executive Decrees 16 and 739. On Twitter, he said, “Thanks to the national dialogue and at the request of social organizations, Decrees 16 and 738 are derogated.” In a broadcast, he explained, “The idea is to unlock completely all the bureaucratic arguments that prevent social

organizations from being able to associate, de facto and de jure” (“Presidente Lenín Moreno Deroga Decretos 16 y 739”).

While NGO leaders applauded the repeal of the previous decrees, they still registered some dissatisfaction with their replacement, Decree 193. For one, Ricaurte characterized it as “an advance, but an insufficient advance” (“Decreto 193” 193). Many complained that the new decree retained many of the problematic grounds for dissolution established by Decree 16, such as deviating from their stated aims or engaging in partisan political activity. It removed only those pertaining to the falsifying documentation and repeatedly contravening official provisions (“Decreto 193” 193).

In addition, Moreno presided over the reinstatement of Fundación Pachamama, which had been closed ever since its dissolution in 2013. In November 2017, the Ministry of the Environment restored the organization’s legal status, finding that the organization’s dissolution had “violated due process.”

While Ricaurte welcomed the changes, he thought there was still a long way to go for Ecuador. “The climate has improved,” he said, “that is to say the attitude with which the government treats the press [and] civil society. The dialogue with political and social actors is really different. This already means a big step forward.” Nevertheless, he continued, “obviously the institutions and the laws constructed in the past ten years, in the authoritarian decade, are still there. Absolutely nothing has been dismantled. Over the next years, Ecuador has to give itself a series of concrete legal and institutional reforms to really construct a democratic system.”

Looking forward, AE’s Almeida expressed both hope and concern for the state of Ecuadorean civil society under Moreno. She said, “This new president has been sending signals that the situation is different, sending signals of change.” However, she added, these signals “are

not that deep because the same people from the previous administration are still governing with the same model of the previous administration.”

### Analysis

#### *Defending Sovereignty (E1)*

Assessing the validity of this explanation merits a brief survey of US intervention in Ecuador. The US has a long and checkered history of intervening—politically, economically, and militarily—in the affairs of Latin American states, a region once referred to as ‘America’s Backyard’ in diplomatic circles. For example, Operation Condor was a CIA campaign from 1968 to 1989 to curtail Soviet influence in South America, including Ecuador. A recently declassified CIA document acknowledges the participation of Ecuador’s military in the campaign:

In mid-January 1978 Ecuador agreed to participate in Condor, a counter terrorism organization composed of the intelligence services of several South American countries. The overall responsibility for Ecuador’s participation and activities in Condor lie with the Ecuadorean Joint Command of the Armed Forces.... The Army through the Directorate General of Intelligence (DGI) is responsible for intelligence reporting and the exchange of information among various Condor members. The Navy is responsible for telecommunications and the Air Force is responsible for psychological warfare. (Operation Condor)

Although the charge has not been verified, the CIA has been implicated in the death of President Jaime Roldos—a leftist at a time when the region was ruled by US-backed autocrats—in a plane crash in 1981. In this sense, Correa’s stated concerns about US intervention in Ecuador are not historically unfounded.

But given that Operation Condor ended nearly 30 years ago, is there still reason to suspect US intervention in the region? Venezuela has definite cause for concern, with President Trump suggesting in September 2017 that a “military option” was not off the table for responding to its ongoing humanitarian crisis (Knoll et al.). So too, it would seem, does Bolivia. In 2008, for example, emails leaked from USAID revealed an agency-funded “political party

reform project [aimed] at implementing an existing Bolivian law that would... over the long run, help build moderate, pro-democracy political parties that can serve as a counterweight to the radical MAS [party of President Morales] or its successors” (Skeen).

But what about Ecuador? Under Correa, relations between the US and Ecuador deteriorated considerably. In 2011, tensions spiked upon WikiLeaks’ publication of a confidential US diplomatic cable from US Ambassador Heather Hodges. In the cable, she alleged Correa’s tacit approval of corruption by the commander of the National Police. She stated, “some Embassy officials believe that President Correa must have been aware of [the corrupt acts] when he made the appointment” (Romero). In retaliation, Correa declared her persona non-grata in Ecuador. He also granted asylum to WikiLeaks founder Julian Assange, who remains holed up in the Ecuadorean embassy in London (Carroll).

In 2013, an Ecuadorean consul offered asylum to Edward Snowden, an NSA contractor who leaked thousands of classified documents about US surveillance practices to *The Guardian* and remains wanted in the US. In response, Snowden commented, “I must express my deep respect for your principles and sincere thanks for your government’s action in considering my request for political asylum.... There are few world leaders who would risk standing for the human rights of an individual against the most powerful government on earth” (Carroll, “Ecuador Says It Blundered over Snowden Travel Document”). However, Correa quickly rescinded the offer, blaming the incident on an embassy official acting without prior authorization.

These incidents—particularly the harboring of Assange—suggest an incentive for US intervention (i.e. compelling the country to release Assange to the authorities). Officially, however, the US maintains that its interests in Ecuador are primarily altruistic. In its defense, it

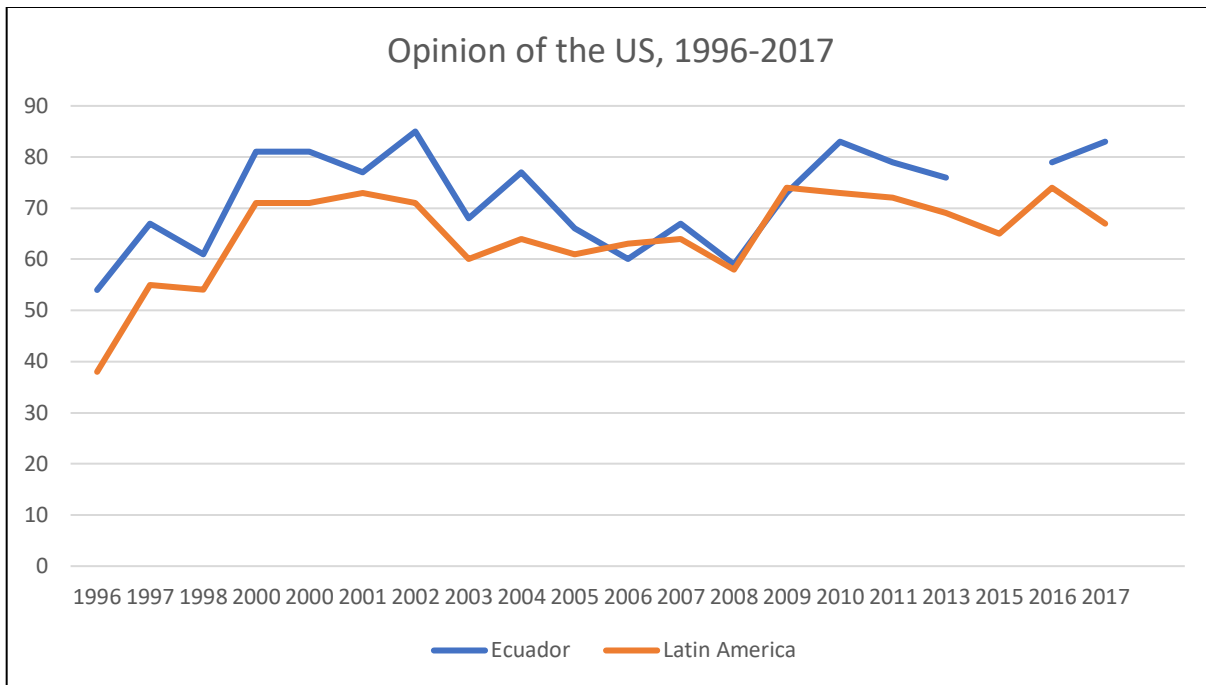
suggests that Correa's anti-American rhetoric is merely self-serving. In 2015, for example, in his address at the Summit of the Americas, President Obama criticized Correa for scapegoating the US for domestic problems in Ecuador:

I always enjoy the history lessons that I receive when I'm here. I'm a student of history, so I tend to actually be familiar with many of these episodes that have been mentioned. I am the first one to acknowledge that America's application of concern around human rights has not always been consistent. And I'm certainly mindful that there are dark chapters in our own history in which we have not observed the principles and ideals upon which the country was founded.

[...] we can, I suppose, spend a lot of time talking about past grievances, and I suppose that it's possible to use the United States as a handy excuse every so often for political problems that may be occurring domestically. But that's not going to bring progress. That's not going to solve the problems of children who can't read or don't have enough to eat. It's not going to make our countries more productive or more competitive in a global economy. (Obama)

Consulting public opinion data sheds some light on the matter. According to Latinobarometer, Ecuadorean public opinion of the US has fluctuated over time between 54 and 85 (see Figure 5). Peaking in 2002 at 85, it decreased throughout the Bush administration to a low of 59. Under Obama, it reached a high of 83 in 2010 before declining again to 76 in 2013. With the exception of 2006, however, Ecuadorean public opinion of the US has almost always been equal to or higher than the average for Latin America.





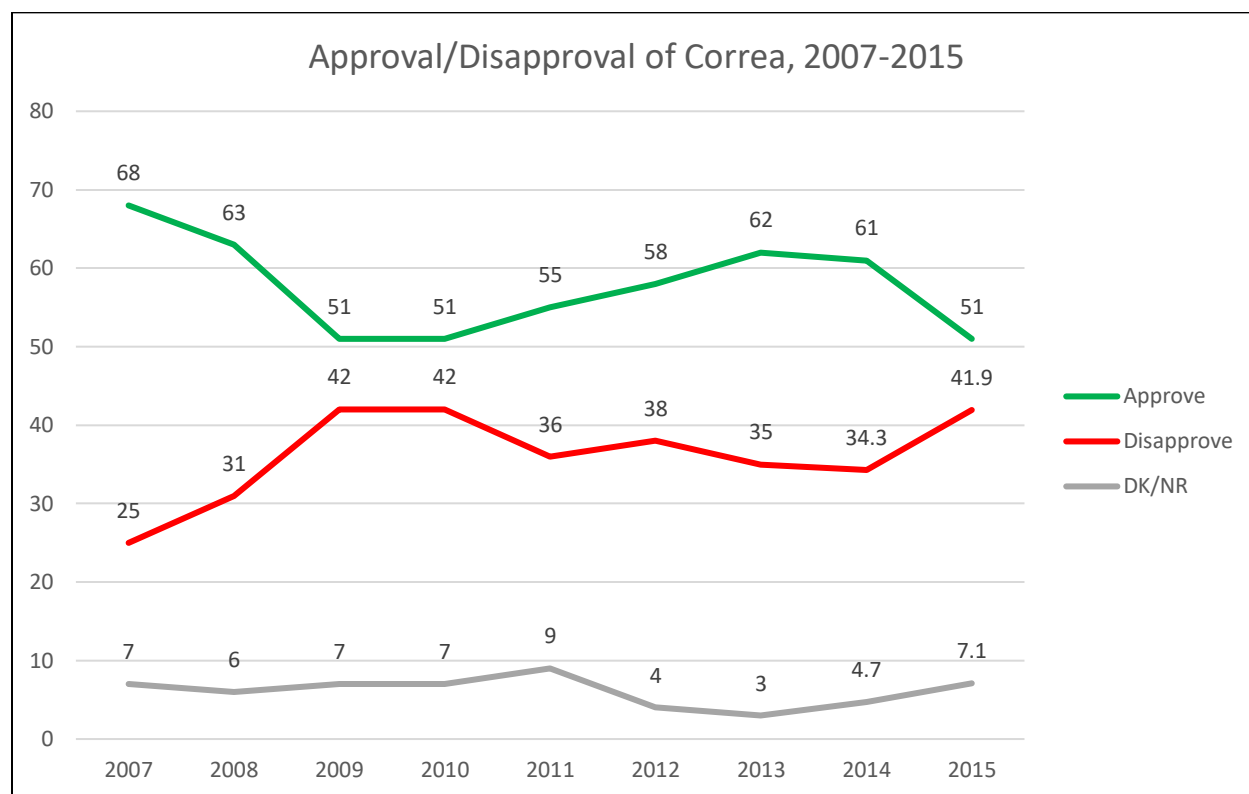
*Figure 5: Popular Opinion of the US in Ecuador, 1996-2017 (Latinobarometer)<sup>2</sup>*

Contrary to the implication of Obama's remarks, the generally good public opinion of the US would suggest that Correa has relatively little to gain politically from speaking out against the US. In fact, in light of the high popularity of the US among Ecuadoreans, Correa's attacks could actually be politically harmful. So, why would Correa do something that is potentially politically harmful? Perhaps it is because he is a patriot, acting out of a genuine concern for sovereignty that trumps more superficial political considerations.

Or perhaps this premise is incorrect and the cost to Correa of criticizing the US is negligible or actually negative (that is, a benefit). The survey question asks, "What is your opinion of the US?" It does not specify 'the US government' or 'the US people' or 'the US culture.' In this sense, perhaps most of the survey respondents shared Correa's negative view of

<sup>2</sup> The break in the line for Ecuador in 2014 and 2015 is simply missing data. There was also no data for 2012.

the US government yet held the US people or US culture in high regard, skewing the rating positive. After all, Correa enjoyed average approval ratings of over 50% for every year of his decade-long tenure (see Figure 6). This is remarkable for a country and a region prone to high political instability.



*Figure 6: Rafael Correa's Approval Rating, 2007-2015 (Mera)*

The truth of the scapegoating allegation aside, in assessing the validity of the defending sovereignty explanation it is not sufficient to rely on Correa's public declarations alone. Looking at the flow of foreign assistance proves instructive. Unlike in Venezuela or Bolivia, where US funding of civil society groups has been directly linked to efforts to destabilize the ruling regime, in Ecuador, as of yet, there has been no such smoking gun. For instance, Fundamedios, the primary target of Correa's ire, received only about \$300,000 from USAID in 2012.

In 2013, the last full year that it operated in the country, USAID was responsible for disbursing \$21 million out of a total \$40 million in US foreign assistance to Ecuador (“U.S. Foreign Aid by Country”). Of USAID’s share, only \$4.8 million—23%—went to “Government and Civil Society.” According to the OECD, this category “includes assistance to strengthen the administrative apparatus and government,” such as support for decentralization, anti-corruption, legal development, civil society, political parties, media, and human rights (“The List of CRS Purpose Codes and Voluntary Budget Identifier Codes”). For context, the largest category was “General Environmental Protection” with \$5.2 million in 2013. So, the amount that went to NGOs was even less than \$4.8 million. Surely, a few million dollars of support was not sufficient to pose an existential threat to Correa’s administration. For context, Ecuador had a GDP of \$95 billion in 2013.

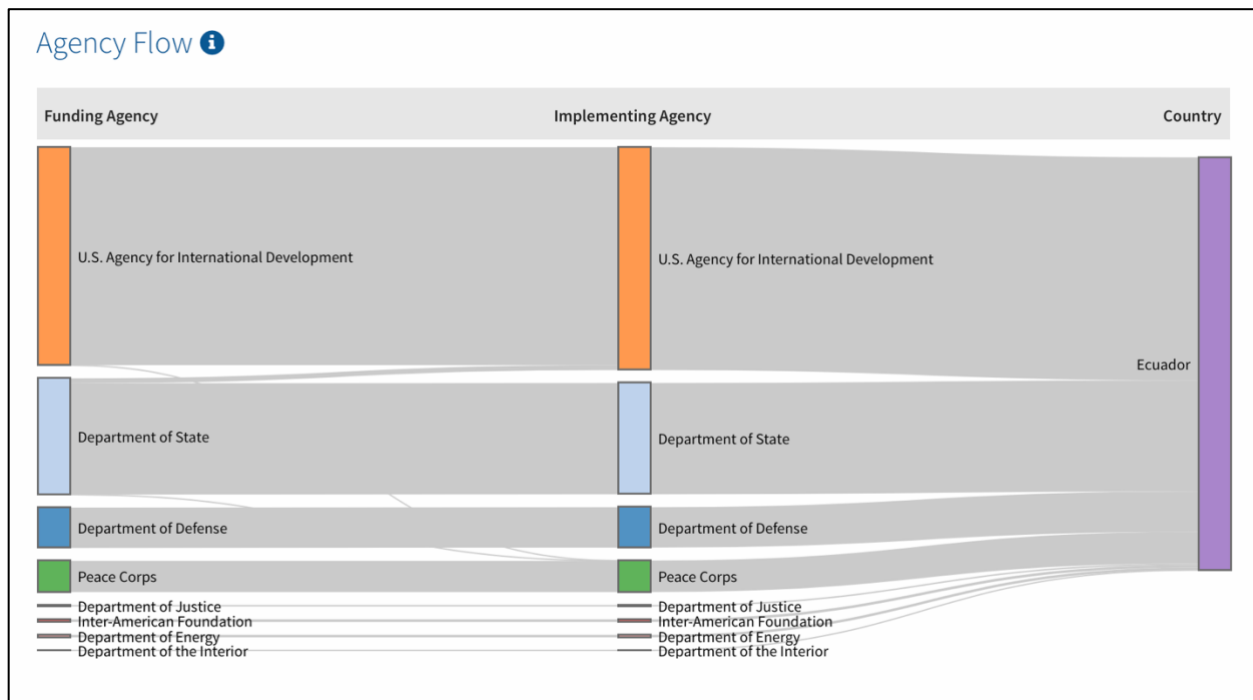


Figure 7: Flow of US Foreign Aid to Ecuador, 2013 (“U.S. Foreign Aid by Country”)

Of course, USAID was not the only the entity through which the US routed assistance to Ecuador. But it did control the largest share (see Figure 7). In 2013, the next largest entities in terms of assistance were the Department of State (\$10.7 million), the Department of Defense (\$3.9 million), and Peace Corps (\$3 million). Upon closer inspection, the Department of State actually disbursed \$6.3 million for “Government and Civil Society”—even more than USAID. But this money went mostly to “International Narcotics Control and Law Enforcement” (\$4.6 million) and “Anti-Terrorism Assistance Training” (\$700,000). The rest—\$800,000—went as NED grants to the Center for International Private Enterprise (CIPE)<sup>3</sup> and five other unspecified NGOs. Again, it is highly improbable that a few hundred thousand dollars of support for NGOs posed a serious threat to the sovereignty of Ecuador. But of course, perceptions can float far from reality; perhaps Correa and those in his cabinet *perceived* a greater threat to their administration than such a quantity would suggest. In light of the attempted coup in 2010, perhaps some degree of paranoia is understandable.

### *Stifling Dissent (E2)*

Relative to the previous explanation, the evidence here tells a considerably clearer story. That is, whatever the validity of the previous explanation, restrictions against foreign-funded NGOs have, from the very start, been used to stifle internal dissent. For example, the dissolution orders for Acción Ecológica and Fundación Pachamama arrived subsequent to those organizations’ involvement in protests against state-backed extraction projects. For Acción Ecológica, the dissolution order came after its opposition to the Mining Law in 2008 and again after taking part in protests against copper mining in Shuar territory in 2015. For Fundación

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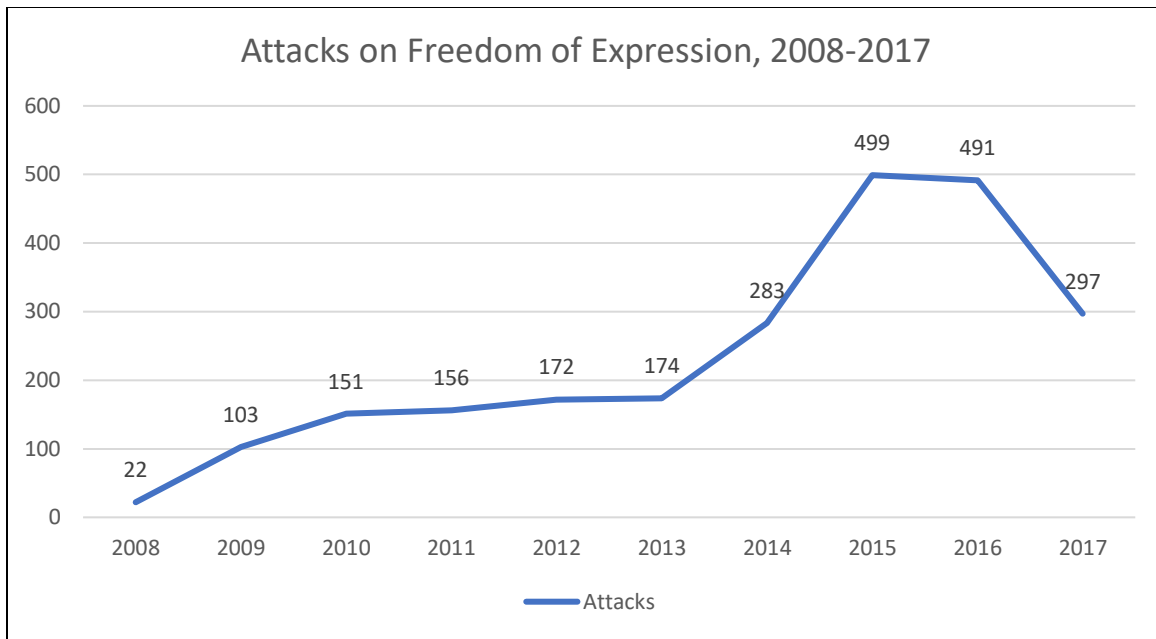
<sup>3</sup> According to its website, CIPE, which focuses on private sector development, is “one of the four core institutes” of NED.

Pachamama, the order came after taking part in protests against the XIth Oil Round in 2013.

Taken together, these examples suggest a coordinated effort among ministries to silence groups standing in the way of achieving national development goals.

The dissolution order for Fundamedios, on the charge of engaging in partisan political activity, suggests a different sub-end: the consolidation of power. After an appearance before the Inter-American Commission on Human Rights in 2011, in which it denounced the environment for the press in Ecuador, Fundamedios found itself under heavy attack by the government. From 2011 to 2014, for example, Correa criticized the organization in at least 36 of his weekly TV broadcasts (Noche).

Correa's attacks against Fundamedios came in the context of a larger war against the media, with the number of attacks on freedom of expression increasing every single year under Correa (see Figure 8). On Fundamedios's count, the number of attacks increased gradually at first, from 22 attacks in 2008 to 174 attacks in 2013, and then drastically, with 283 attacks in 2013 and 499 attacks in 2014. It attributed the sharp uptick from 2013 to 2014 to the signing of a new Communications Law in 2013 that established vague obligations for news outlets along with strict punishments for failing to comply (Kaye and Lanza).



*Figure 8: Attacks on Freedom of Expression in Ecuador, 2008-2017*

On one reading, the increase in attacks on freedom of expression throughout Correa's tenure belie a lowering tolerance for dissent on the part of the president. To be sure, Correa's attitude towards the press was never particularly supportive. Almost from the start of his administration, he worked to expand government control over the media, buying up newspapers, TV channels, and radio stations. Then in 2013, the Communication Law was justified on the basis of democratizing the media landscape in Ecuador, historically dominated by a few private companies. In practice, however, the law was used to sanction oppositional outlets and impose official content upon them. Though it did somewhat democratize the media landscape, the law also facilitated the acquisition of previously critical outlets by Correa supporters such as Remigio Ángel González, who obtained concessions to 60 TV channels and 44 radio stations ("Life After Correa"). In addition, the law carved out a loophole for Correa's weekly broadcast, exempting it from the onerous obligations placed on other forms of media. In practice, this allowed Correa to criticize his opponents, such as Fundamedios, without fear of legal repercussion.

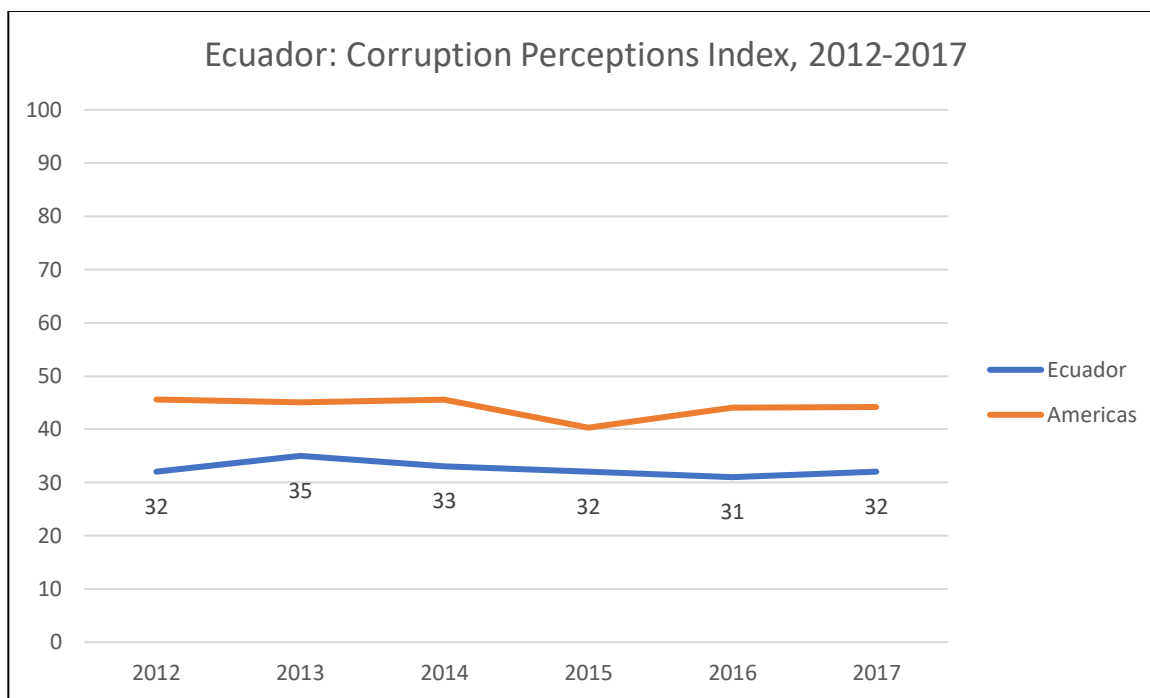
But perhaps the clearest indication of power hungriness on the part of Correa was the strength of his reaction to Moreno's proposal to reinstate presidential term limits by means of a constitution amendment. Having already served two terms, the amendment effectively barred Correa from returning to office for a third term. Prior to the referendum, Correa returned to Ecuador from Belgium, where he had been living with his wife in his post-presidency, to campaign against the measure. During the campaign, he repeatedly referred to the referendum as a "coup d'etat," characterizing the proposal as an effort to undo the legacy of the Citizens' Revolution that brought him to power (Zibell). Publicly, he downplayed his interest in reelection: "My political career does not interest me. If I thought about my political career I would have stayed silent and not assumed the cost of the 'No' campaign. I am here for my country; my political future does not interest me" (Fuentes). However, the severity of his anger suggests, privately, that he thought of Moreno as a placeholder in his own political career.

### *Seeking Rents (E3)*

Another motivation behind enacting regulatory barriers for NGOs may have been to create more opportunities for bureaucrats to solicit bribes. In other words, they may have served to grease the wheels of the political machine by rewarding the lower-level officials who staffed the various ministries which grant legal status to NGOs. Empirically, the validity of this explanation is difficult to ascertain as corruption is, by nature, a surreptitious business. Ready evidence of corruption is even harder to come by in the social sector, in light of donors' requirements for transparency.

Yet it is possible to approximate the degree of corruption in civil society with reference to popular perceptions of corruption. One such indicator is the Corruption Perceptions Index (CPI) from Transparency International, which aggregates data from various organizations that

track perceptions of corruption in the public sector. For 2017, Ecuador ranked 117 out of 180 in the world (lower is better) in terms of corruption with a score of 32 (higher is better), considerably lower than the global average of 43.07 (see Figure 9). In the Americas, Ecuador came in at 24<sup>th</sup> place, marginally worse than El Salvador and Bolivia (both with 33) and marginally better than the Dominican Republic, Honduras, Mexico, and Paraguay (all with 29).



*Figure 9: Ecuador's Corruption Perceptions Index Score, 2012-2017*

Another indicator is Latinobarometer. Conducted annually, it is a survey of public opinion across Latin America that asks several questions relating to corruption. These include questions such as, “Have you or any relative heard of any act of corruption in the last 12 months?” or, “How much progress do you think there has been in reducing corruption in the state institutions over the past 2 years?” (*Latinobarometer Questionnaire*).

For the survey conducted in 2017, only 6% of Ecuadoreans ranked corruption as the most important problem in the country, lower than the regional average of 10% and far lower than



Brazil's high of 31% (see Figure 14). Also, fully 55% of Ecuadoreans think their country has made progress in reducing corruption in the last two years. This was the highest rate in all of Latin America, with a regional average of 35% (see Figure 15). In addition, in Ecuador the probability of bribing a ministerial functionary for a contract was 25, tied with Uruguay for the third lowest probability in the region behind Nicaragua (24) and Chile (19). For reference, Venezuela (50), Paraguay (51), and Mexico (51) came in at the top of the list (see Figure 16). Finally, on a scale from zero (no corruption) to ten (much corruption), Ecuadoreans rated their perception of corruption in government at 6.7, the third lowest on the list. Only Chile (6.3) and Uruguay (6.2) were lower than Ecuador (see Figure 17).

Collectively, the Latinobarometer data does not suggest that Ecuador has a significant problem in terms of the perception of corruption, relative to the rest of the region. In fact, it suggests that Ecuador is better off in this respect than all but a few other countries in the region. But this result stands in tension with that of Transparency International, which rated Ecuador well below the regional average in this respect.

Regardless of which indicator more accurately gauges perception, the perception of corruption can differ greatly from the reality of corruption. For instance, the perception of corruption may well be higher in an objectively low-corruption country with a strong, independent press that readily identifies and reports instances of corruption than in a high-corruption country with a weak, dependent press that fails to report them. In this sense, both scores are merely approximations of corruption. So, in the absence of concrete evidence of the aforementioned mechanism, I must set this explanation aside.

### Chapter III: Peru

#### Timeline

June 1990	<ul style="list-style-type: none"> <li>• Alberto Fujimori is elected</li> </ul>
April 1992	<ul style="list-style-type: none"> <li>• Fujimori stages a self-coup, suspending congress and dissolving the judiciary</li> </ul>
September 1993	<ul style="list-style-type: none"> <li>• New constitution is approved</li> </ul>
April 1995	<ul style="list-style-type: none"> <li>• Fujimori is elected to a second term</li> </ul>
November 2000	<ul style="list-style-type: none"> <li>• Fujimori goes into exile</li> </ul>
April 2001	<ul style="list-style-type: none"> <li>• Alejandro Toledo is elected</li> </ul>
April 2002	<ul style="list-style-type: none"> <li>• Law 27692 creates the Peruvian Agency for International Cooperation</li> </ul>
June 2006	<ul style="list-style-type: none"> <li>• Alan García is elected to a second, non-consecutive term</li> </ul>
December 2006	<ul style="list-style-type: none"> <li>• Law 28925 expands APCI's purview</li> </ul>
September 2007	<ul style="list-style-type: none"> <li>• NGOs challenge the constitutionality of Law 28935</li> </ul>
June 2011	<ul style="list-style-type: none"> <li>• Ollanta Humala is elected</li> </ul>
May 2015	<ul style="list-style-type: none"> <li>• Resolution 85 expands APCI's purview</li> </ul>
June 2016	<ul style="list-style-type: none"> <li>• Pedro Pablo Kuczynski is elected</li> </ul>
December 2016	<ul style="list-style-type: none"> <li>• Resolution 130 reduces APCI's purview</li> </ul>
March 2018	<ul style="list-style-type: none"> <li>• Martín Vizcarra succeeds Kuczynski</li> </ul>

*Table 4: Timeline of key events and regulations pertaining to civil society*

## Background

### *Fujimori Administration, 1990-2000*

For the decade of the 1990s, Peru was governed by Alberto Fujimori. Trained as an agronomist, Fujimori staged an outside bid for the presidency in 1989 with a new party, Cambio '90. On his platform of "Work, Honesty, and Technology," he defeated the conservative candidate and author, Mario Vargas Llosa. Though of Japanese descent, Fujimori nevertheless tried to identify with Peru's mestizo majority, selling himself as "a president like you." In contrast to Vargas Llosa, who called for an economic shock to curtail Peru's hyperinflation, Fujimori advocated for a more gradual approach ("Peru - The 1990 Campaign and Elections").

Once in office, however, Fujimori found himself saddled with a large budget deficit from his predecessor, Alan García, and constrained by his party's lack of representation in the legislature as well as the interests of international lenders. Despite his campaign rhetoric, in the end he instituted an economic shock of his own. The "Fujishock" consisted of eliminating subsidies and price controls and unpegging the Peruvian inti from the US dollar. The consequences were severe: "Overnight, prices of bread and milk tripled. The cost of noodles and newspapers quadrupled. And the price of cooking gas increased 25-fold" (Brooke).

Without much party machinery, Fujimori increasingly allied himself with the military. Then in April 1992, with the support of the military, he staged a self-coup, suspending the constitution and disbanding the legislature and the judiciary as well as curtailing civil liberties ("Peru - Government"). Fujimori justified the coup on the basis of amassing the necessary authority to reform the economy and defeat the insurgencies. In retrospect, he stated, "either Peru continued walking, quickly heading to the abyss of anarchy and chaos, pushed by terrorism and before the passiveness of the state organization, or I took the risk of providing the state with the

necessary instruments for putting an end to that threat” (Starn et al.). In this sense, Fujimori portrayed himself as an autocrat of necessity.

In 1993, Fujimori proposed a new constitution with protections for freedom of expression and association. Precisely, with respect to the former, it guaranteed the right “To freedom of information, opinion, expression, and dissemination of thought, whether oral, written, or in images.” With respect to the latter, it guaranteed the right “To associate and establish foundations and other forms of not-for-profit legal organizations without prior authorization, and in accordance with the law.” Further, it stipulated, “These organizations may not be dissolved by administrative resolution” (*Constitution of 1993*).

Under the Civil Code of 1984, which remains in effect today, committees, associations, and foundations have distinct legal characters. A foundation is a “non-profit organization established by the assignment of one or more legal or natural personalities to accomplish objectives that are of religious, cultural, welfare, or other social interest” (“Peru”). The most rigorous designation, “Foundations are established less often than associations because there are many drawbacks, including being subject to more state control and supervision” (“Peru”).

Under Fujimori, somewhat counterintuitively, NGOs initially thrived in the vacuum created by the weakening of traditional political parties, in particular that of the well-established American Popular Revolutionary Alliance (APRA). After the coup, however, human rights NGOs increasingly came under attack by the government. For protection, they aligned themselves with religious institutions and foreign funding agencies (Crabtree). For example, the National Coordinator of Human Rights (CNDDHH), a coalition of Peruvian human rights organizations, successfully weathered the Fujimori years with the backing of the US (Drzewieniecki).

Buoyed by his military success against the insurgents, Fujimori was elected to a second term in 1995. In 2000, however, he found himself caught up in a corruption scandal when his intelligence chief, Vladimiro Montesinos, was caught on camera bribing an opposition politician for support. Fujimori subsequently fled to Japan, from where he announced his resignation on TV. Though he enjoyed high public approval ratings throughout his presidency, ultimately Fujimori's legacy was that of "the dismantling of institutions; the disappearance of the party system; the destruction of mechanisms of public control; and the almost total corrosion of the state apparatus" (Alasino).

*Toledo Administration, 2001-2006*

After a brief caretaker government, economist Alejandro Toledo was elected president in 2001. Of Quechua ancestry, Toledo initially enjoyed high rates of popularity among Peru's indigenous population (Burr and Davies). Following the tumult of Fujimori's ouster, the start of Toledo's tenure was a time of relative political and economic stability (Alasino). In this period, NGOs gained significantly more political influence. In particular, human rights NGOs were instrumental in the work of the 2001 Truth and Reconciliation Committee, which published a report on the human rights abuses of the previous administrations in 2003 (Crabtree). In the same period, NGOs became the partners of choice for foreign funders, as they "had much better working relationships with local communities than state institutions, which had an unfortunate reputation for authoritarianism, inefficiency and corruption" (Crabtree).

*Law 27692*

In 2002, Law 27692 established the Peruvian Agency of International Cooperation (APCI) with the mandate of "Optimizing the use of non-refundable international cooperation resources, guaranteeing their alignment with national development objectives" ("APCI Quiénes

Somos”). APCI created two registries: one of NGOs engaged in development work (ONGD) and one of Foreign Entities of International Cooperation (ENIEX). Per APCI’s classification, an ONGD “is a private non-profit institution with an autonomous structure and policy of governance, independent of the government and the state institutions as well as the agencies of cooperation and the beneficiaries themselves; that also realizes development promotion work.” Essentially, it refers to any NGO engaged in development work. By contrast, APCI defines an ENIEX as “a foreign NGO that executes activities and projects of development cooperation using funds and resources that it receives voluntarily from the civil society or the government of its country of origin” (“Glosario de Términos”).

ONGDs and ENIEXs fall into different regulatory categories. Both types must submit a yearly report to APCI detailing their progress on all of their projects and programs as well as their plan for the upcoming year. Both types can also be suspended from the registry for “fraudulent inaccuracy” in their self-reporting or the “prohibited, unauthorized, or illicit” use of funds. However, ONGDs must also include participatory mechanisms in the design of their projects and coordinate their activities with local, regional, and national levels of government.

*García Administration, 2006-2011*

In 2006, APRA candidate Alan García returned to the presidency for a second non-consecutive term. His first presidency, from 1985 to 1990, was characterized by a radical economic agenda and, ultimately, a severe recession. However, in a virtual political 180, in his second presidency he adopted a decidedly neoliberal agenda. For example, he signed a bilateral free trade agreement with the US in 2008.

He articulated his new agenda in his 2007 Op-ed, “The Dog in the Manger,” referencing Aesop’s fable about the dog that prevents the cattle from eating the hay. In it, he criticized those

Levine

interests standing in the way of Peru's economic development (e.g. environmentalists, indigenous groups). He states:

There are millions of hectares for forestry that are idle, millions of hectares more that communities and local associations haven't cultivated nor will cultivate, as well as hundreds of mineral deposits that can't be exploited and millions of hectares of sea that are never commercially fished. The rivers that run down either side of the cordillera are a fortune that goes to the sea without producing electrical energy. There are, as well, millions of workers that don't exist, although they labour, since their jobs don't provide them with social security or a pension for later on in life, because they don't contribute what they could to building national savings.

So, there are many unused resources that aren't tradeable, don't receive investment, and don't generate employment. And all that because of the taboo of left-behind ideologies, because of idleness, indolence, and the law of the dog in the manger who prays: "If I don't do it, let nobody do it". (Bidwell)

Law 28925

Soon after taking office, in December 2006 García signed Law 28925, vastly expanding APCI's mandate. It gave APCI the authority to regulate organizations "that manage [international technical cooperation funds] without the participation of the state but who benefit from a privilege, tax benefit or exemption, use state resources, or when the cooperating entity is a bilateral or multilateral entity of which Peru is a member" ("Peru"). Previously, APCI's regulatory purview had been limited to NGOs that access such funds through state institutions ("Peru"). At this point, virtually any NGO receiving foreign funding was answerable to APCI.

The revision provoked an outcry in Peru and around the world. As Jose Manual Vivanco, the Americas Director of Human Rights Watch, charged, "The new restrictions will oblige local NGOs to submit to a level of state interference and control reminiscent of a totalitarian regime." He added, "Though it is legitimate for a government to regulate the activities of NGOs to ensure that they comply with the law and operate in a transparent manner, that a government organism has supervisory control over the activities of NGOs is a violation of fundamental rights and

contrary to the basic principles of a functioning democracy” (Vivanco, “Carta al Presidente García”).

A coalition of Peruvian NGOs challenged the constitutionality of the law before the Constitutional Tribunal. Appealing to the Constitution of 1993, they argued that the law violated the fundamental freedoms of privacy and association. In an article in the magazine of the Institute for Legal Defense (IDL), a human rights NGO, Hans Landolt argues that “Far from promoting and protecting the (indispensable) activity of NGOs, [the state] has opted for a legal instrument that facilitates the intimidation and the discrimination of those non-profit associations that offend the government of the powerful factions” (Landolt). Moreover, he complains, “There are multiple mechanisms through which NGOs report and account, but by pretexting transparency, the new law establishes unreasonable demands, exceeds the public interest and sets an arbitrary legal regime for non-profit associations.”

Ultimately, the court deemed the law unconstitutional, ruling that registration was not required for organizations that do not take advantage of state benefits or resources (“Peru”).

Precisely, it stated:

With regard to the Regime of infractions and sanctions subject to the authority of the APCI, the [Constitutional Tribunal] states that only entities included in the application of the rule are considered as taxpayers; being excluded from the sanctioning authority of the APCI those entities that, at the date of entry into force of the regulation, enjoyed privileges and benefits for having voluntarily enrolled in the APCI. (*Tribunal Constitucional*)

While the court agreed that APCI had overstepped its mandate, it did not accept the plaintiffs’ deeper argument that the law violated the fundamental freedoms of privacy or association.

In line with his pro-free trade stance, in 2008 and 2009 García issued a series of decrees facilitating the exploitation of the Amazon by multinational companies. Specifically, Decree 1090 expanded the definition of “idle and unproductive lands,” which are subject to



privatization, and Decree 1064 made deforested areas eligible for private sale. Predictably, these measures were met with strong opposition by indigenous communities, resulting in violent clashes with the police.

As chronicled in the 2016 documentary, “When Two Worlds Collide,” the protests were coordinated by the Interethnic Association for the Development of the Peruvian Jungle (AIDESEP), a coalition of 109 indigenous federations. The protests included staging rallies, organizing marches, and blocking access roads. However, the protests turned violent on June 6, 2009, when police attempted to disperse a human roadblock at Devil’s Curve in Bagua province, resulting in the deaths of 23 indigenous people and 11 policemen. In response to the violence, a group of demonstrators outside of Petroperú Station 6 (the state oil company) forcibly occupied the plant, killing nine policemen and holding the others hostage. Bowing to pressure stemming from the government’s response to the ‘Baguazo,’ Congress rescinded decrees 1090 and 1064 in June 2009. However, it left the other contested decrees in place.

In the aftermath of the violence, Mercedes Cabanillas, the interior minister, accused Alberto Pizango, the president of AIDESEP, and other indigenous leaders of inciting violence and sedition, among other charges. Subsequently, Pizango was granted political asylum in Nicaragua, where he remained for nearly a year. Upon his return to Peru in May 2010, he was promptly arrested (“Peru Indigenous Leader Pizango Freed on Bail”). After a trial that dragged on for more than two years, Pizango and the other 52 indigenous leaders accused were acquitted of all charges in September 2016.

In relation to their involvement in protests, García’s government accused NGOs like AIDESEP of “standing in the way of national development objectives, being irresponsible, unaccountable and lacking in transparency; and acting autocratically towards those with whom

they work in civil society” (Crabtree). The attacks were not just rhetorical. In August 2008, just a few days after suspending its strike against the decrees, AIDSEP was notified that it was being audited by the APCI—the first time it had been audited in its 28 years of existence (Thériault). Similarly, the human rights NGO Aprodeh found itself under audit by APCI in April 2008 after protesting the continued designation of the Tupac Amaru Revolutionary Movement (MRTA) as a terrorist group, an action for which García accused it of “treason against the nation” (Thériault).

*Humala Administration, 2011-2016*

After losing to García in 2006, former military officer Ollanta Humala staged a second bid for the presidency in 2011. In the previous election, he had been handicapped by his association with Hugo Chávez. This time, he distanced himself from Chávez on a moderate platform that emphasized poverty reduction instead of radical economic reform. In doing so, however, he alienated much of the left. Though the economy fared well under Humala, his popularity suffered as a result of political instability and corruption scandals. He was also criticized for the government’s response to anti-mining protests (“Ollanta Humala”).

In September 2015, for example, in the province of Cotabambas, community members protested the relocation of the Chinese-owned Las Bambas molybdenum plant without first consulting the community. The protests, which blocked the entrance to the plant, were met with lethal force by the police, resulting in the deaths of three protestors. In response, Humala declared a state of emergency in the province and those around it, temporarily suspending civil liberties. Subsequently, 50 members of the community were charged with crimes such as aggravated damage and robbery, conspiracy, and obstruction of transportation (Díaz).

Resolution 85

In May 2015, with Executive Resolution 85 the government had expanded APCI's purview such that any organization receiving international support had to submit its activities for review by APCI. Those that failed to comply risked removal from the official register (Gestión). Specifically, they were required to:

- establish that the APCI supervised their use of Non-Refundable International Cooperation (CINR) resources;
- provide an annual report and annual plan of activities for the coming year;
- demonstrate compliance with any recommendations made by the APCI; as well as
- confirm that they have a current *Registro Unico de Contribuyente* (RUC) ("Peru")

The resolution was accompanied by an announcement from APCI's director, Rosa Herrera, that the agency would be "developing a process of supervision" of NGOs operating in areas prone to social conflict (e.g. mining zones). By this, she meant that they would be sending inspectors to monitor those NGOs (Gestión).

As with Law 28925 before it, the announcement of Resolution 85 was met with considerable opposition by civil society groups. For example, in an open letter to APCI, the National Association of Centers of Research, Social Promotion, and Development (ANC) called for the repeal of the resolution (Appe and Barragán).

#### *Kuczynski Administration, 2016-2018*

In 2016, Pedro Pablo Kuczynski, a businessman and former finance minister, narrowly defeated Keiko Fujimori, the daughter of the former president, in a runoff election. Kuczynski ran on a centrist platform, stressing free market economics and anti-corruption. He won by gaining the support of the left and effectively attacking Keiko for her association with her father (Hollar).

In general, relations between the state and civil society improved under Kuczynski's brief tenure. In fact, for nearly a decade prior to assuming office, Kuczynski served on the board of

Agua Limpia, an NGO that “facilitates coordination between local and regional government, the private sector, and communities for the implementation of systems of potable water and self-sustaining sanitation” (*Agua Limpia*). As president, he put water provision high on the agenda, pledging around-the-clock access to potable water and sewage connections for all Peruvians by 2021 (Collins). In August 2017, Kuczynski fulfilled the demands of environmentalists in declaring the Tres Cañones Regional Conservation Area, protecting nearly 100,000 acres from development. He also allocated more funding to the National Forest Conservation Program and increased efforts to oppose illegal gold mining in Madre de Dios (Wiebel and Ortiz).

#### Resolution 130

With respect to the legal landscape for NGOs, in December 2016 Kuczynski signed Executive Resolution 130, restricting APCI’s mandate. Specifically, it “[eliminated] the requirements of having been supervised by APCI and complying with the recommendations made as a result of the supervisory actions of APCI” (“Peru”). Apparently, the resolution was motivated by the imperative to lighten the administrative burden on APCI created by Resolution 85. Regardless of the underlying motivation, ANC welcomed the policy change. In a statement on December 17, 2016, it explained, “Although the [Resolution 130] does not repeal [Resolution 85], it modifies ... the directive establishing the procedures in the Registries of NGOs and ENIEX... simplifying the renewal procedure” (“APCI Aprueba Modificaciones en el Marco Legal”).

In December 2017, however, Kuczynski found himself embroiled in a corruption scandal related to the Brazilian construction firm Odebrecht, which paid out hundreds of millions of dollars in bribes to politicians all around Latin America. When Kuczynski was serving as minister of finance for Humala, his Miami-based investment firm accepted \$782,000 in payment

from Odebrecht. Kuczynski narrowly survived an impeachment attempt in December by appealing to pro-Fujimori elements in congress. In a quid-pro-quo for his political survival, Kuczynski subsequently pardoned Fujimori, who had been serving a 25-year sentence for crimes against humanity, on medical grounds.

Then in March 2018, a video surfaced of Kenji Fujimori, Alberto's son, and one of Kuczynski's lawyers bribing a congressman in exchange for his support in the impeachment vote. Following the release of the video, Kuczynski announced his resignation. In March 2018, he was replaced by his vice president, Martín Vizcarra. As Vizcarra has just assumed office, it is too early to comment on the dynamics of state-civil society relations under his watch.

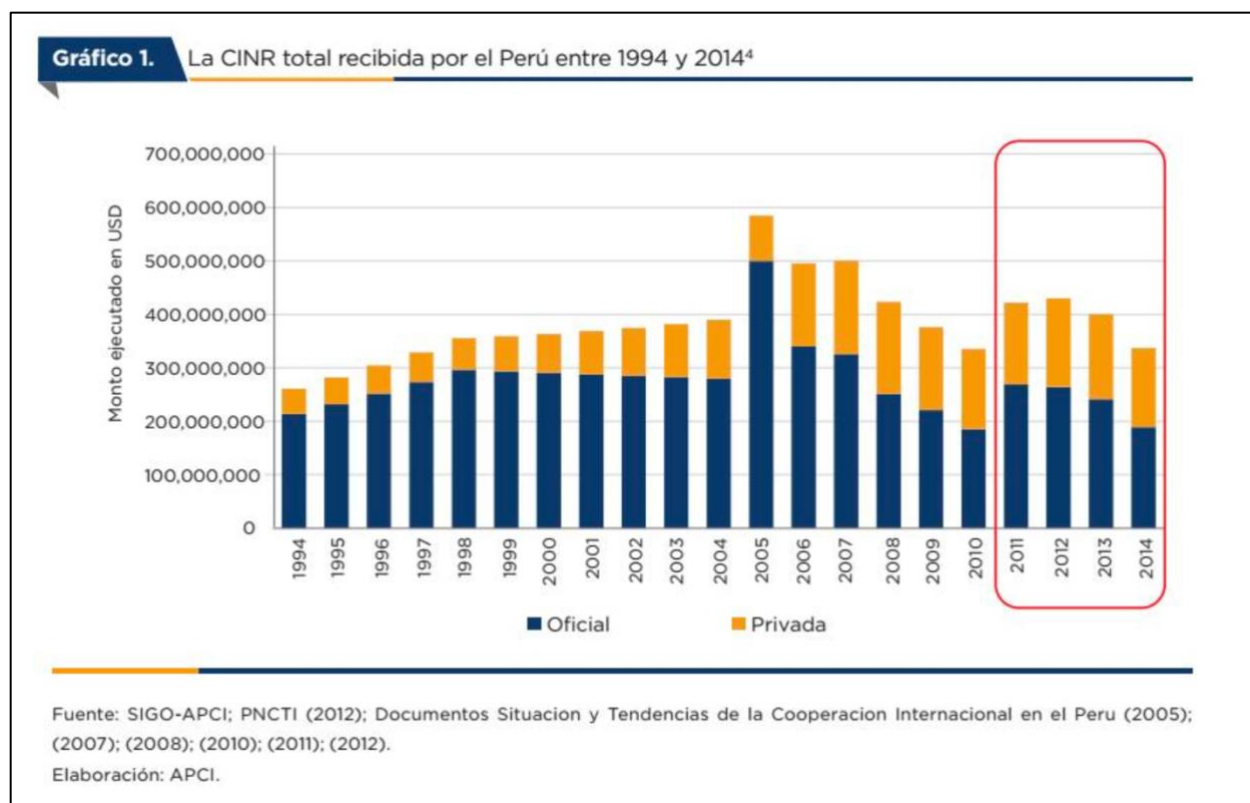
### Analysis

#### *Defending Sovereignty (EI)*

The creation of APCI in 2001 asserted the role of the state in the expanding realm of international cooperation. According to APCI, from 1994 to 2007, the total quantity of non-refundable foreign assistance<sup>4</sup> flowing into Peru—from both governmental and private sources—nearly doubled: from \$250 million per year in 1994 to \$500 million per year in 2007, with a spike in 2005 at nearly \$600 million (see Figure 10). In effect, APCI served to capture much of this assistance and route it through the state.

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<sup>4</sup> APCI defines non-refundable foreign assistance as “A set of concerted efforts and actions agreed upon between the parties, working in partnership based on shared principles of equity, solidarity, ownership and alignment; and on differentiated commitments directed at achieving common sustainable development outcomes” (*National Policy for Technical International Cooperation*).



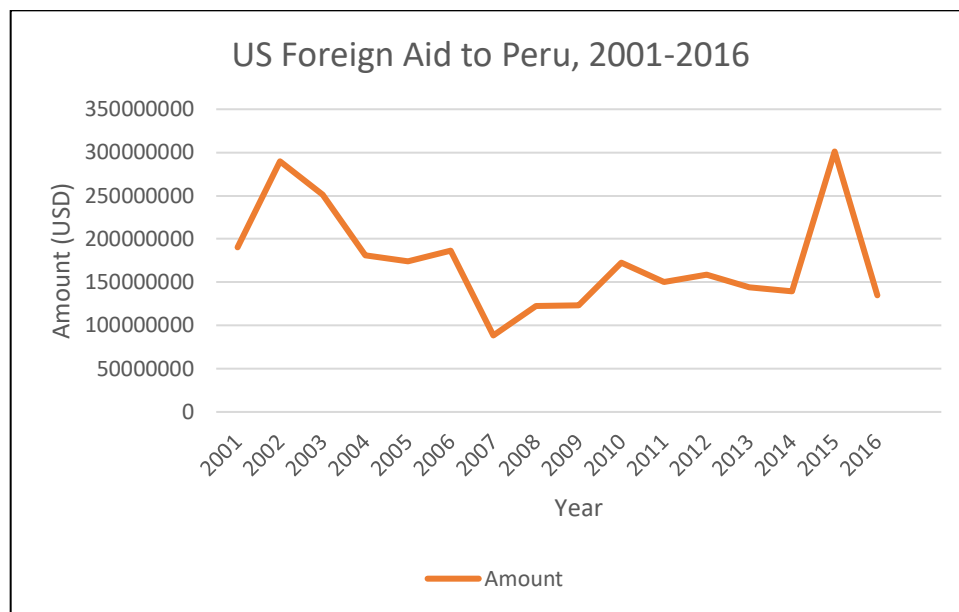
*Figure 10: Total Non-Refundable International Cooperation Received by Peru, 1994-2014*

Publicly, the creation of APCI was justified as a means of allocating funds in line with national development objectives. As stated on its website, APCI's mission is as follows:

Guiding public institution that orients and articulates the supply and demand of non-refundable international cooperation at different levels of government and civil society with a decentralized focus, providing quality services based on the principles of efficiency and transparency; thus, contributing to national efforts in support of the sustainable development of the country. ("APCI Quiénes Somos")

In line with this mission, its functions include, the "strategic development of international cooperation with the goal of overcoming the welfarist scheme of previous eras" as well as the "formulation of cooperation plans that articulate the national demand and define the priorities as a function of sectoral and national development strategies" ("APCI Quiénes Somos"). Together, these functions constitute a rejection of passive dependency on foreign donors in favor of an active, state-centered approach to international cooperation.

As in Ecuador, the biggest player in foreign assistance to Peru has been the US. According to the Foreign Aid Explorer, the amount of US foreign aid disbursed to Peru spiked in 2002 at \$290 million, decreasing to a low of \$88 million in 2007, the year before Peru was officially declared an Upper Middle-Income (UMI) country by the World Bank (see Figure 11). Thereafter, the amount of aid stabilized around \$150 million annually, with the exception of a spike in 2015 at \$301 million, with nearly half of that amount going to narcotics control.



*Figure 11: US Foreign Aid to Peru, 2001-2016*

But looking specifically at support for civil society shows a different picture. Such aid—a relatively small part of the total aid package—declined precipitously between 2001 (\$5.9 million) and 2003 (\$288,000). It has remained below \$1 million ever since (see Figure 12). With a GDP of \$192 billion in 2016—nearly twice that of Ecuador’s in the same year—a few hundred thousand dollars a year in support for civil society looks positively paltry.

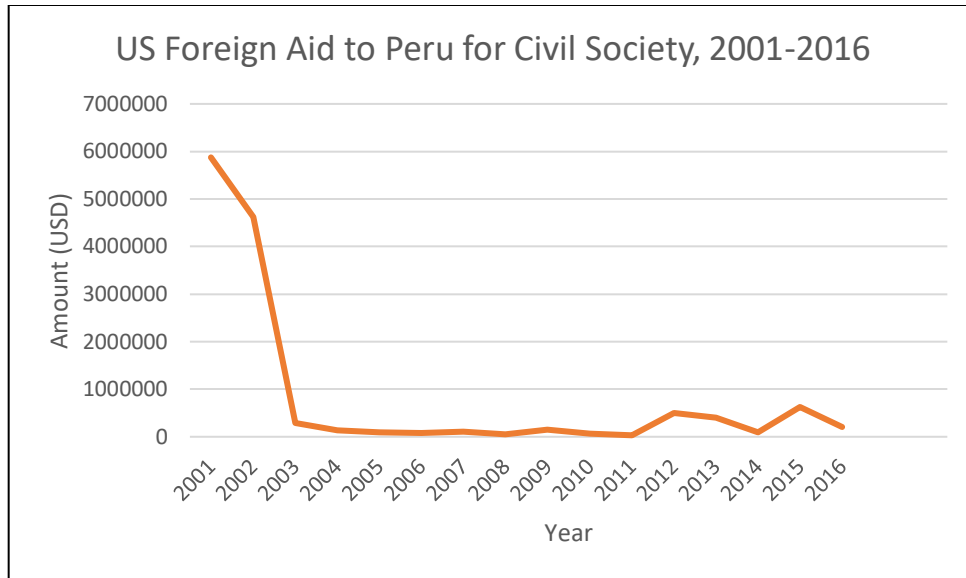


Figure 12: US Foreign Aid to Peru for Civil Society, 2001-2016

So, it would seem that there is even less support for the defending sovereignty explanation in this case than in that of Ecuador. That is not to say that APCI's creation did not belie the perception of the erosion of sovereignty, in light of the increase in the total amount of foreign assistance flowing into Peru (though still small relative to GDP). In any event, a closer look at the quantity of US support for civil society does not suggest that NGOs were the proper object of the government's hypothetical fears.

### *Stifling Dissent (E2)*

In this case, there is considerably more evidence pointing to the explanation that restrictions on NGOs were motivated by a desire to stifle dissent. Seemingly, such measures furnish the state with weapons (e.g. monitoring, auditing) with which to threaten organizations that stand in the way of realizing its interests, namely environmentalists and indigenous groups. The 'Baguazo' conflict is a prime example of such a conflict. On one side, there was García, a converted neoliberal, with an overriding interest in attracting foreign investment to exploit Peru's rich oil and mineral reserves. With respect to the ongoing indigenous strike, he commented:



When we have resources like oil, gas and lumber and abundant fishing in the Amazon that can give work to many people in the rivers of our jungle, that doesn't belong just to the group that had the good fortune to be born there. The Amazon belongs to you and your children. It belongs to the whole nation. The riches of Peru belong to all Peruvians and should be enjoyed by all of us. (Brandenburg and Orzel)

He also said:

These people do not have crowns. These people are not first-class citizens. 400,000 natives cannot tell 28 million Peruvians that, 'You don't have any right to come here.' No way. This is a grave error. It is like they want to take us back to primitive times. The government has been extremely patient until now. But the country cannot have a gun to its head. The government must act with strength to restore order. The people expect the State to maintain order. This must end. (Brandenburg and Orzel)

On the other side, there was Pizango, deeply committed to upholding indigenous land rights and protecting the environment. Replying to García, he said:

We do not oppose development. We are always demonized: "The indigenous people are capricious. They are savages that do not understand development." That is why they think we are obstacles to development. That is not true. We want the country to progress, but without putting lives at risk. (Brandenburg and Orzel)

Then came the criminalization of protest, following the violence in Bagua, with the issuing of an arrest warrant for Pizango and dozens of other indigenous leaders. And then in the midst of the crisis, supposedly at random, APCI announced that it was auditing AIDSESEP.

In light of Peru's endemic political instability, with a generally adversarial relationship between the executive and the legislature following the Fujimori era, there is little evidence to suggest that the stifling of dissent had as its sub-end the consolidation of power. In Peru, in contrast to Ecuador under Correa or Bolivia under Morales, the leaders have been too weak to attempt such a power grab.

### *Seeking Rents (E3)*

Considering the endemic corruption at the highest level of Peruvian government—"Four of the five living elected presidents have been accused of corruption" as well as the

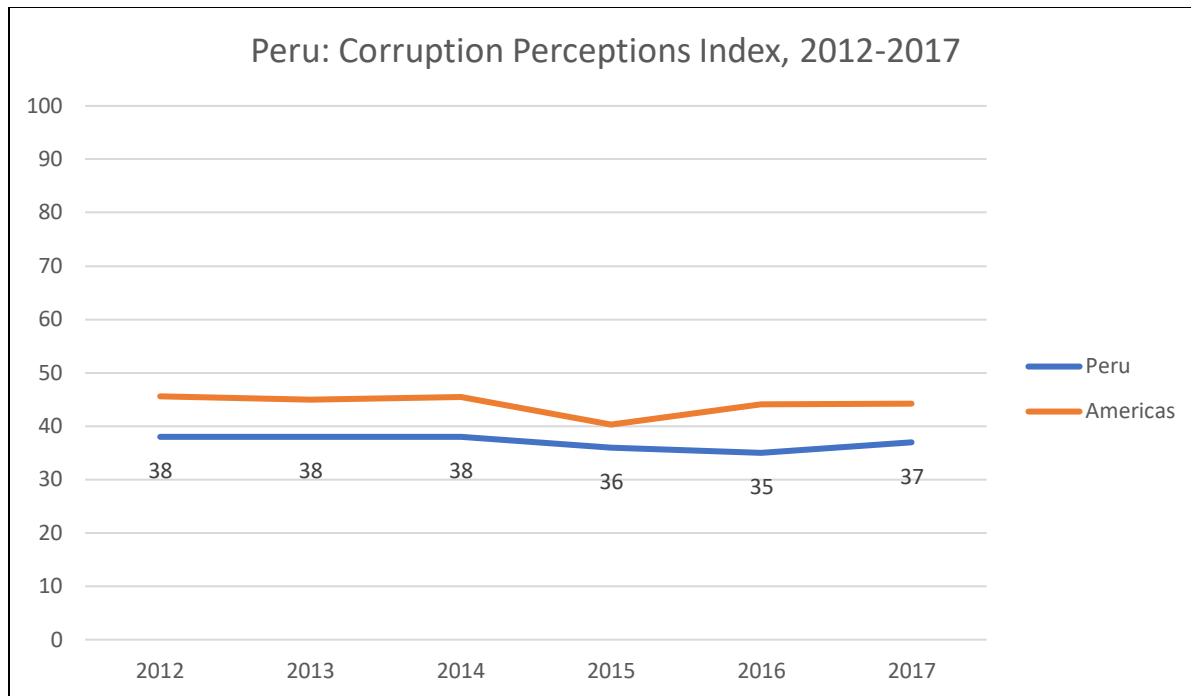
leading opposition politician in Keiko Fujimori—one might wonder how the lower levels of government fare in this respect (“Peru’s President Pedro Pablo the Brief”). Given the apparent moral laxity at the top of the pyramid, where one would expect the most scrutiny of public figures, what of the thousands of civil servants that staff the various government ministries and their agencies, such as APCI? This intuition lends credence to the rent-seeking explanation—that states restrict NGOs to reward the political supporters of the current administration by creating additional opportunities for soliciting bribes from civil society leaders.

There is anecdotal evidence of such practices. According to the US Department of State, “NGOs and civil society leaders reported that some government officials allegedly sought bribes in exchange for documents, which indigenous persons were unable or unwilling to pay. Without identity cards, they were unable to exercise basic rights, such as voting and gaining access to health services and education” (*Peru 2016 Human Rights Report*). In another anecdote, a lawyer for the Fundación Chijmaya, a US-based NGO promoting development in southern Peru, was able to register the organization only after a chance encounter in a bar with a magistrate, with some money changing hands. Allegedly, this episode came after years of rejected applications submitted through official channels.<sup>5</sup>

According to the Corruption Perceptions Index from Transparency International, for 2017 Peru ranked 96th out of 180 in the world (lower is better) in terms of corruption with a score of 37 (higher is better) (see Figure 13). In the Americas, it was tied for 18<sup>th</sup> with Brazil, Colombia, and Panama, above Bolivia and El Salvador (both with 33) and behind Guyana (38) and Argentina (39).

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<sup>5</sup> This incident was described to me by Professor Heather Williams in December 2017.



*Figure 13: Peru's Corruption Perception Index Score, 2012-2017*

Revisiting the 2017 Latinobarometer survey, fully 19% of those surveyed considered corruption the most important problem in their country (see Figure 14). This was the third-highest percentage in the region, behind only Brazil (31%) and Colombia (20%) and nearly double the regional average of 10%. Only 27% of those surveyed thought Peru had made progress in reducing corruption in the past two years. Tied with Mexico, this was the third lowest percentage in the region, higher only than El Salvador and Venezuela (22%) (see Figure 15). However, the probability of bribing a ministerial functionary for a contract was only 36—equal to the regional average. For reference, the country with the lowest probability was Chile (19) and the countries with the highest probability were Paraguay and Mexico (both 51) (see Figure 16). Finally, on a scale from zero (no corruption) to ten (much corruption), Peruvians rated their perception of corruption in government at 8.4, tied with Venezuela for the highest in the region (see Figure 17). For reference, Uruguay was the lowest at 6.2.

Collectively, these results are rather promising for the rent-seeking explanation, if not for the quality of governance in Peru. Although the merely average probability for bribing a ministerial functionary does not strongly support the notion that lower-level officials regularly solicit bribes for registering NGOs, the first and last statistics are so striking as to merit further consideration. Also, it is important to note that the survey was conducted before Kuczynski's implication in the sweeping Odebrecht scandal, his unsuccessful impeachment and subsequent pardoning of Fujimori, and eventually his resignation upon the publication of a video showing vote-buying on the part of his lawyer. Certainly, these events are unlikely to diminish Peruvians' perceptions of corruption in their country.

## Chapter IV: Conclusions

### Findings

With respect to the first explanation (E1)—that states restrict NGOs to curtail subversive foreign influence—I find only circumstantial evidence for Ecuador and no real evidence for Peru. In Ecuador, considering its historical experience of US intervention and strained relations with the US in recent years, Correa’s stated concern for sovereignty was not obviously unfounded. However, upon closer inspection of US aid flows to Ecuador, support for civil society groups like Fundamedios turns out to be quite small relative not only to Ecuador’s GDP but also to US support for other kinds of initiatives—too small to conceivably pose a threat, let alone an existential threat to Correa’s administration.

In Peru, despite APCI’s stated concern for sovereignty, a review of the foreign aid data yields much the same conclusion: far too little money flowing from the US to Peruvian civil society to pose any sort of real threat to the government. In the absence of a significant historical experience of US intervention or contentious contemporary relations with the US (in fact, bilateral relations have generally been quite good since the ouster of Fujimori), a concern for sovereignty appears utterly unfounded.

With respect to the second explanation (E2)—that states restrict NGOs to stifle domestic dissent—I find compelling evidence in both cases. In Ecuador, the dissolution orders for Acción Ecológica, Fundación Pachamama, and Fundamedios all came on the heels of those organizations’ involvement in protests against government-backed initiatives. More precisely, the attacks against the first two organizations for their opposition to mining projects suggest

stifling dissent with the *sub-end* of economic development. By contrast, in light of Correa's considerable cult of personality, the attacks against Fundamedios for criticizing the government's treatment of the press point to the consolidation of power as the sub-end. And in Peru, the auditing of AIDSESEP by APCI following its mobilization against privatization also suggests the stifling of dissent to the sub-end of development, particularly in light of García's stated economic rationale.

Finally, with respect to the third explanation (E3)—that states restrict NGOs to facilitate rent-seeking—I find contradictory evidence in Ecuador and promising evidence in Peru. In Ecuador, the Latinobarometer data indicates a relatively low perception of corruption in government. By contrast, the Transparency International data indicates a relatively high perception of corruption. In the absence of anecdotal evidence supporting the proposed mechanism by which leaders might reward lower-level bureaucrats, I reject this explanation for Ecuador. In Peru, however, the corruption indicators tell a consistent story, one bolstered by anecdotal evidence, albeit limited, of corruption in the NGO registration process. In Peru, this explanation certainly merits further consideration. Here, the challenge for researchers is that NGOs are unlikely to admit to engaging with a corrupt system for fear of alienating donors.

### Recommendations

My findings point to some tentative recommendations for foreign-funded NGOs and international donors in anticipating or responding to backlash. First, my research suggests that NGOs should strengthen their transnational ties. Indeed, transnational solidarity is a powerful defense mechanism for NGOs against government backlash. In Ecuador, for instance, both Fundamedios and Acción Ecológica did not avert dissolution alone. Rather, they did so with the help of an outspoken coalition of international actors such as Human Rights Watch, Amnesty

International, IFEX, and NACLA that pressured Correa's government to drop the motion.

Likewise, in Peru, some of the same actors were instrumental in pushing back against efforts to expand APCI's mandate.

Second, my research suggests that NGOs should increase the share of their funding derived from domestic sources. To this end, they should focus more of their fundraising on domestic audiences. Not only would this reduce their dependence on foreign funding—undermining the charge, however spurious, that they are merely vehicles of foreign influence—but it would also promote the cultural norm of charitable giving. This is not to say that they should reject foreign funding; even if the quantity of funds derived from domestic sources is not hugely significant, having a greater number of small donors would give more people a stake in their work. Relative to non-donors, intuition would suggest that donors are more likely to mobilize around the NGO in times of attack. So, having a larger pool of donors would put the NGO in a stronger position to push back against government repression.

Third, in determining how to respond to backlash against their recipients, my research suggests that foreign donors should approach the trend with a greater degree of nuance. That is to say, their strategies should be sensitive to the political, economic, and social dynamics of the host state. This means being sensitive to the state's experience of foreign intervention as well as considering leaders' deeper ends for stifling dissent, such as facilitating development or consolidating their personal power. Donors should take all of these variables into account in designing their response. The determinants of backlash are different everywhere, so when it comes to combatting backlash, there is no one-size-fits-all approach.

#### Further Inquiry

In the spirit of further inquiry, others might conduct their own analyses of the factors motivating backlash in other regions, such as Sub-Saharan Africa (e.g. Kenya) or South Asia (e.g. India). Analyses of other regions are likely to invite different hypotheses and yield different conclusions than mine. This is consistent with the spirit of this thesis: to nuance the discussion of backlash with observations drawn from analyzing a particular region of the world.

Following Appe and Barragán, further consideration might be given to the ways in which NGOs in hostile states have adapted to their unique political circumstances. In their article, for example, they discuss how foreign-funded NGOs in Ecuador have partnered with research universities to circumvent restrictions on foreign assistance. And in Peru, there is evidence to suggest that would-be NGOs have instead registered as associations or committees, other designations under Peruvian tax law, to get around the restrictions that apply to NGOs.

Finally, more attention might be paid to the notion of *easing* backlash as a potential challenge to the dominant narrative about *ever-increasing* backlash against civil society. In both of the cases considered, recent administrations have moved to ease or abolish some of the restrictions put in place by their predecessors. In Ecuador, for example, Moreno has overseen the repeal of Decrees 16 and 739 and the reinstitution of Fundación Pachamama. Meanwhile, in Peru, Kuczynski pared back APCI's mandate with Executive Resolution 130. Although neither Moreno nor Kuczynski completely undid the legislative legacy of their predecessors, their actions stand in opposition to the notion of mounting backlash. It remains to be seen how civil society fares under Moreno and Vizcarra—whether recent signs of reconciliation towards civil society represent a deep thawing of state-civil society relations or merely a brief lull in an otherwise increasingly hostile relationship.



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## Appendix I: Latinobarometer Figures

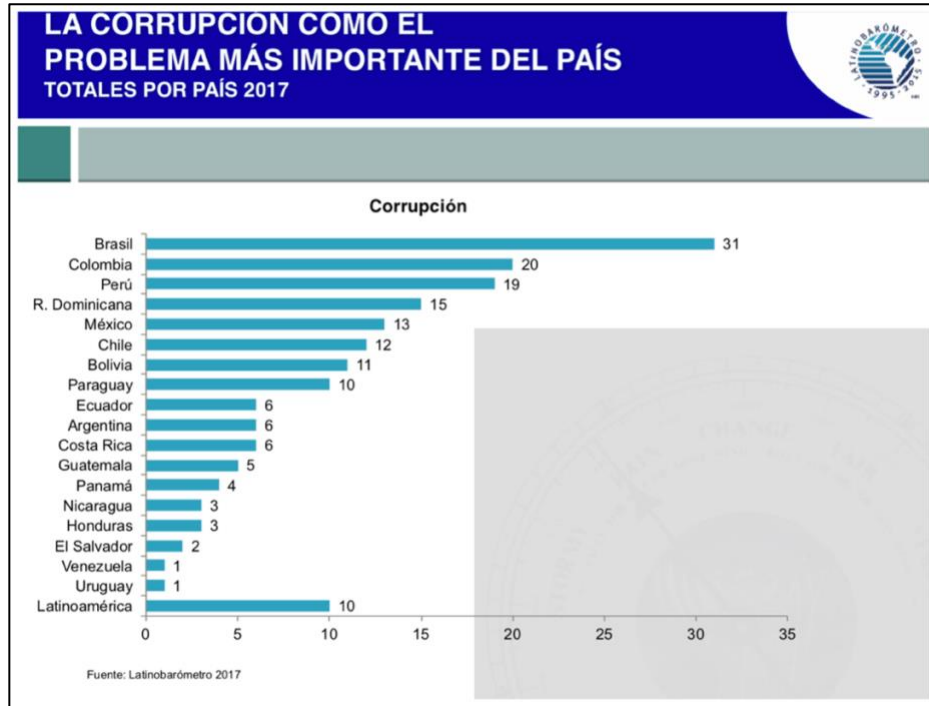


Figure 14: Corruption as the most important problem in the country

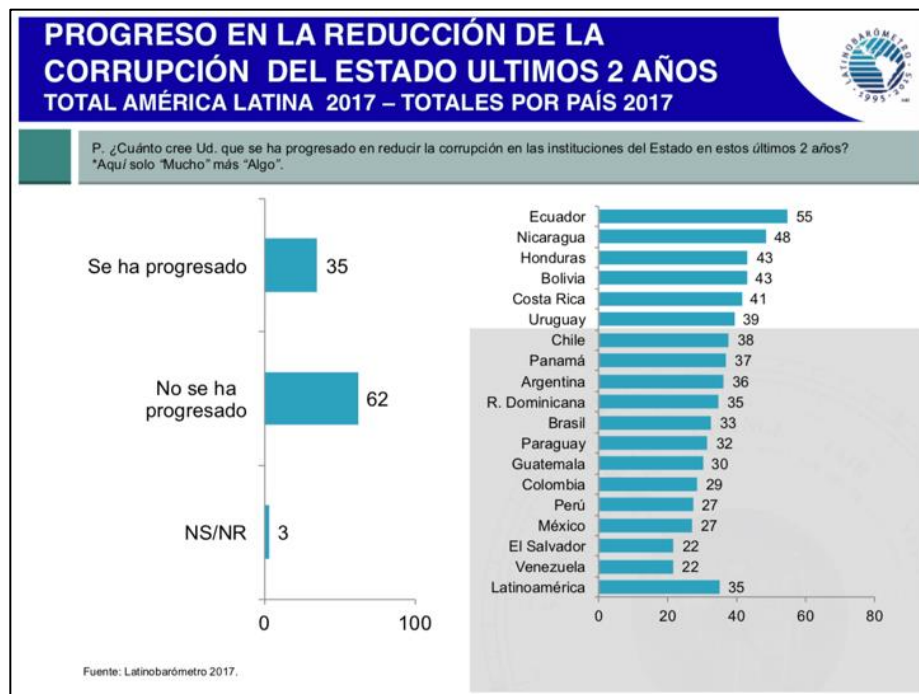


Figure 15: Progress in the reduction of state corruption in the last two years



Figure 16: Probability of bribing a police officer, a judge, and a ministerial functionary



Figure 17: Corruption in Latin America by country